No. 12872

United States Court of Appeals

for the Ninth Circuit.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska and R. E. Sheldon, Director and Chief Executive Thereof,

Appellants,

vs.

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Appellees.

Transcript of Record

Appeal from the District Court for the Territory of Alaska, Division Number One.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

No. 12872

United States
Court of Appeals
for the Ninth Circuit.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska and R. E. Sheldon, Director and Chief Executive Thereof,

Appellants,

vs.

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Appellees.

Transcript of Record

Appeal from the District Court for the Territory of Alaska, Division Number One.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

INDEX PAGE

INDEX PAGE

NAMES AND ADDRESSES OF ATTORNEYS

FAULKNER, BANFIELD and BOOCHEVER,
Box 1121,
Juneau, Alaska,

For the Plaintiffs.

HON. J. GERALD WILLIAMS,
Attorney General of Alaska,

JOHN H. DIMOND,
Asst. Attorney General of Alaska,
Juneau, Alaska,

For the Defendants.

In the District Court for the District of Alaska,
Division Number One at Juneau
Civil Cause No. 6356-A

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Plaintiffs.

vs.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

For cause of action against defendants, plaintiffs complain, and allege as follows:

I.

That plaintiff New England Fish Company is a corporation organized and existing under the laws of the State of Maine, and authorized to do business in Alaska, and it was so authorized at all times mentioned herein, and it is duly qualified as a corporation doing business in Alaska, and it has filed its annual reports and paid all corporation license fees required to do business in the Territory; and

that plaintiff Wards Cove Packing Company is a corporation organized and existing under the laws of Alaska, and authorized to do business therein, and it has filed the annual reports required by law and paid all corporation license fees due the Territory.

II.

That plaintiffs are members of an association known as the Alaska Salmon Industry, Inc., and they bring this action on their own behalf and on behalf of all other members of the Alaska Salmon Industry, Inc., which itself is a corporation duly organized and composed of member corporations, who are all contributors to the Alaska Unemployment Compensation Fund hereinafter mentioned, and on behalf of all others similarly situated.

III.

That plaintiff New England Fish Company is now and has, for many years, been engaged in Alaska in the business of catching, purchasing, canning, freezing and shipping fish, including salmon and halibut in Alaska, and it has an annual payroll in Alaska of Approximately $842,501.02, and it is subject to the provisions of Chapter 4, Session Laws of the Extraordinary Session of the Alaska Legislature of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, and Chapter 40, laws of 1941, Chapters 8, 20 and 50, laws of 1945, Chapter 32, laws of 1946, Chapter 74, laws of 1947, and Chapter 112, laws of 1949 (Sections 55-5-1 to 55-5-20, inclusive, ACLA 1949), known and desig-

nated as "Alaska Unemployment Compensation Law"; and that plaintiff Wards Cove Packing Company is now and for many years has been engaged in the business of catching, purchasing, canning and shipping fish and fish products in Alaska, and it has an annual payroll of approximately $192,598.82, and it is subject to the provisions of all the above-mentioned laws of the Territory.

IV.

That the statutes above mentioned are enforced and their provisions are required to be administered by a commission which is referred to and designated as "Unemployment Compensation Commission of Alaska," but the name of the Commission was changed by the provisions of Chapter 53, Session Laws of Alaska, 1949, to "Employment Security Commission of Alaska." That the defendants George Vaara, Anthony Zorich and Ralph J. Rivers constitute the present Employment Security Commission of Alaska, and they are the duly appointed and acting members thereof; and the defendant, R. E. Sheldon, is the director and chief executive of the Commission.

V.

That plaintiffs have made payments to the Alaska Unemployment Compensation fund as required by the statutes hereinabove mentioned since the date of the passage of Chapter 4, Laws of the Extraordinary Session of the Alaska Legislature, 1937, and they have received certain experience rating credits against their required payments, from

July 1, 1947, until June 30, 1950, as provided by Chapter 74, Session Laws of Alaska, 1947 (Sec. 51-5-5 ACLA 1949); that during the period from July 1, 1949, to July 1, 1950, the total amount of $5,101.72 was paid in cash by New England Fish Company and $17,645.82 was applied against credits which had been assigned to plaintiff New England Fish Company in accordance with the terms of the statute; and that during the year 1949, the total amount of contributions paid by the Wards Cove Packing Company in cash was $886.89 and the total amount of credits assigned and used by it was $4,313.28.

VI.

That Section 51-5-5 ACLA, 1949, as amended by Chapter 112, Session Laws of 1949, requires plaintiffs, and all other employers in Alaska, to pay into the Alaska Unemployment Compensation fund 2.7 per cent of its payroll for each quarter year, and Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5, ACLA, 1949), sets up certain credits against these payments according to a formula therein contained, and it requires the defendants to compute the credits and notify the employers, including the plaintiffs, of the amount of the credits, and to give all employers, subject to the provisions of the law, including plaintiffs, the benefit of the credit due, thereby reducing the amount of cash or money contribution required to be paid, until the total amount in the Unemployment Compensation Trust Fund falls below four times the amount of contributions paid on or before the cut-off date,

hereinafter mentioned, for the preceding calendar year, or below 60% of the contributions so paid for such calendar year.

VII.

That "contribution" is defined in the law as "money payments to the Alaska Unemployment Compensation Fund required by this Act" (Section 55-5-1, ACLA, 1949).

VIII.

That the defendants established a "cut-off" date as it is defined in the law, as of March 15, 1950, and notified all employers, including plaintiffs, that no more credits would be granted after July 1, 1950, and that none could be used after that date under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5, ACLA, 1949), and the Commission issued a bulletin and order to that effect on April 28, 1950.

IX.

That at the "cut-off" date as established by defendants on March 15, 1950, there was in the Trust Fund, which would be the "surplus" as defined in the law, the sum of $9,397,006.93, and the total contributions by all employers during the preceding year amounted to $1,370,519.14, so that at the "cut-off" date aforesaid the amount of surplus in the fund exceeded four times the contributions by $3,914,930.37, and it greatly exceeded 60% of those contributions.

X.

That plaintiffs have credits due them for the last half of 1950 and they will have further credits due for the first six months of the year 1951 in excess of a total sum of $10,000.00 for New England Fish Company and in excess of $4,000.00 for Wards Cove Packing Company, but that since these credits are computed by defendants according to a formula set up in the law for their use involving certain classifications and percentages applied thereto, plaintiffs have no means of determining the exact amount thereof, and the "cut-off" date was established and credits discontinued by defendants contrary to law, and the aforesaid order of the Commission of April 28, 1950, is void.

XI.

That on August 28, 1950, application was made in writing to defendants on behalf of plaintiffs and all others similarly situated, to rescind the order fixing the cut-off date as of March 15, 1950, and to restore the credits due plaintiffs and other employers for the last two quarters of 1950 and for the first six months of the year 1951, but the application was denied by defendants.

XII.

That, unless enjoined by the court, defendants threaten to and will deny to plaintiffs and all others similarly situated, any and all credits due them for the quarter ending September 30, 1950, and they will be obliged to pay to defendants during the

month of October, 1950, and, also, during the months of January, April and July, 1951, large cash contributions amounting to many thousands of dollars, which are not due under the law, and which cannot be recovered or credited against future contributions due from them, and defendants threaten to and will enforce the aforesaid order of April 28, 1950, unless enjoined by this court.

XIII.

Plaintiffs will suffer irreparable injury by the acts of the defendants aforesaid, and they have no plain, speedy or adequate remedy at law, and no remedy whatsoever except through the intervention of a court of equity.

Wherefore, plaintiffs pray:

I.

That the court issue herein an order and mandatory injunction directed to defendants, ordering and commanding them to compute and assign to plaintiffs and to all others similarly situated, the credits due them under the provisions of the statutes herein mentioned and under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5, ACLA, 1949), and to permit them to reduce the amount of cash contributions otherwise required to be paid to the defendants by them for the quarter years ended September 30 and December 31, 1950, and March 31 and June 30, 1951.

II.

That all cash contributions required by defendants to be paid them as Unemployment Compensation contributions during the pendency of this action by plaintiffs and all others similarly situated, in excess of the amounts required by law, be refunded them to the extent of the credits due them for the quarter year covered by the payments.

III.

That the court make such other and further orders and grant plaintiffs such other and further relief as may be meet in the premises.

/s/ H. L. FAULKNER,
FAULKNER, BANFIELD & BOOCHEVER,
Attorneys for Plaintiffs.

[Endorsed]: Filed October 9, 1950.

In the District Court for the District of Alaska,
Division Number One at Juneau
Civil Cause No. 6377-A

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Plaintiffs and Petitioners,

vs.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Defendants.

PETITION FOR REVIEW OF DECISION OF EMPLOYMENT SECURITY COMMISSION OF ALASKA

Come now the Plaintiffs and Petitioners, and complain, allege and petition as follows:

I.

That Plaintiff and Petitioner New England Fish Company is a corporation organized and existing under the laws of the State of Maine, and authorized to do business in Alaska, and it was so authorized at all times mentioned herein, and it is duly qualified as a corporation doing business in Alaska, and it has filed its annual reports and paid all corpora-

tion license fees required to do business in the Territory; and that Plaintiff and Petitioner Wards Cove Packing Company is a corporation organized and existing under the laws of Alaska, and authorized to do business therein, and it has filed the annual reports required by law and paid all corporation license fees due the Territory.

II.

That Plaintiffs and Petitioners are members of an association known as the Alaska Salmon Industry, Inc., and they bring this action on their own behalf and on behalf of all other members of the Alaska Salmon Industry, Inc., which itself is a corporation duly organized and composed of member corporations, who are all contributors to the Alaska Unemployment Compensation Fund hereinafter mentioned, and on behalf of all others similarly situated.

III.

That Plaintiff and Petitioner New England Fish Company is now and has, for many years, been engaged in Alaska in the business of catching, purchasing, canning, freezing and shipping fish, including salmon and halibut in Alaska, and it has an annual payroll in Alaska in excess of $735,000, and it is subject to the provisions of Chapter 4, Session Laws of the Extraordinary Session of the Alaska Legislature of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, and Chapter 40, Laws of 1941, Chapters 8, 20 and 50, Laws of 1945, Chapter 32, Laws of 1946, Chapter 74, Laws

of 1947, and Chapter 112, Laws of 1949 (Sections 51-5-1 to 51-5-20, inclusive, ACLA, 1949), known and designated as "Alaska Unemployment Compensation Law"; and that Plaintiff and Petitioner Wards Cove Packing Company is now and for many years has been engaged in the business of catching, purchasing, canning and shipping fish and fish products in Alaska, and it has an annual payroll in excess of $190,000, and it is subject to the provisions of all of the above-mentioned laws of the Territory.

IV.

That the statutes above mentioned are enforced, and their provisions are required to be administered and are administered by a commission designated "Employment Security Commission of Alaska," and that the Defendants George Vaara, Anthony Zorich and Ralph J. Rivers constitute the present Employment Security Commission of Alaska, and they are the duly appointed and acting members thereof; and the Defendant R. E. Sheldon is the Director and Chief Executive of the Commission.

V.

That Plaintiffs and Petitioners have made payments to the Alaska Unemployment Compensation Fund, as required by the statutes hereinabove mentioned, since the date of the passage of Chapter 4, Session Laws of the Extraordinary Session of the Alaska Legislature of 1937, and they have received certain experience rating credits against their re-

quired payments from July 1, 1947, until June 30, 1950, as provided by Chapter 74, Session Laws of Alaska, 1947 (Sec. 51-5-5, ACLA, 1949); and that during the calendar year 1949 Plaintiff and Petitioner New England Fish Company paid to the Employment Security Commission of Alaska, as required by law, the sum of $4,903.24, and the sum of $15,073.52 was assigned to it as credits under the law by the Defendants in accordance with the terms of the statutes; and that during the calendar year 1949 Plaintiff and Petitioner Wards Cove Packing Company paid the Defendants in cash as contributions on its payroll the sum of $886.89, and it was assigned credits by the Defendants for the calendar year 1949 of $4,307.83.

VI.

That Chapter 4, Laws of the Extraordinary Session, 1937, as amended by Chapter 74, Session Laws of Alaska, 1947, requires Plaintiffs and Petitioners, and all other employers in Alaska, to pay into the Alaska Unemployment Compensation Trust Fund 2.7 per cent of their payrolls for each quarter year, less certain credits which are set up in Chapter 74, Session Laws of Alaska, 1947, and these credits are set up according to a formula contained in that statute, and under the law the Defendants are required to compute the credits and notify the employers, including Plaintiffs and Petitioners, of the amount of the credits, and to give all employers subject to the provisions of the law, including Plain-

tiffs and Petitioners, the benefit of the credits due, thereby reducing the amount of cash or money contributions required to be paid, until the total amount in the Unemployment Compensation Trust Fund set up under the provisions of the law falls below four times the amount of contributions paid on or before the cut-off date, hereinafter mentioned, for the preceding calendar year, or below 60 per cent of the contributions so paid for such preceding calendar year.

VII.

That "contribution" is defined in the law as "money payments to the Alaska Unemployment Compensation Fund required by this Act" (Section 51-5-1, ACLA, 1949).

VIII.

That the Defendants established a "cut-off" date as it is defined in the law as of March 15, 1950, and notified all employers, including Plaintiffs and Petitioners, that no more credits would be granted after July 1, 1950, and that none could be used after that date under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5, ACLA, 1949), and the Commission issued a bulletin and order to that effect on April 28, 1950.

IX.

That at the "cut-off" date as established by Defendants on March 15, 1950, there was in the Trust Fund $9,397,006.93, and the total contributions of all employers during the preceding year amounted

to $1,370,519.14, so that at the "cut-off" date aforesaid the amount of surplus in the fund exceeded four times the contributions by $3,914,930.37, and it greatly exceeded 60 per cent of those contributions.

X.

That Plaintiffs and Petitioners have credits due them for the last half of 1950 and they will have further credits due for the first six months of the year 1951 in excess of a total sum of $10,000.00 for Plaintiff and Petitioner New England Fish Company, and in excess of $4,000.00 for Plaintiff and Petitioner Wards Cove Packing Company, but that since these credits are computed by Defendants according to a formula set up in the law for their use involving certain classifications and percentages applied thereto, Plaintiffs and Petitioners have no means of determining the exact amount thereof, and the "cut-off" date was established and credits discontinued by Defendants contrary to law, and the aforesaid order of the Commission of April 28, 1950, is void.

XI.

That on August 28, 1950, application was made in writing to Defendants on behalf of Plaintiffs and Petitioners and all others similarly situated, to rescind the order fixing the cut-off date as of March 15, 1950, and to restore the credits due Plaintiffs and Petitioners and other employers for the last two quarters of 1950 and for the first six months of the year 1951, but the application was denied by Defendants.

XII.

That after the cut-off date as defined in the law was established on March 15, 1950, and the Defendants determined to allow no further credits to Plaintiffs and Petitioners and other employers after June 30, 1950, Plaintiffs and Petitioners were required by the Commission and Defendants to pay to the Commission and Defendants into the Trust Fund a full 2.7 per cent of their payrolls for the quarter ending September 30, 1950, and that upon demand of Defendants and under their interpretation of the law, Plaintiffs and Petitioners paid to Defendants 2.7 per cent of their respective payrolls for the quarter ending September 30, 1950, and the payment was made by Plaintiff and Petitioner New England Fish Company on October 9, 1950, and by Plaintiff and Petitioner Wards Cove Packing Company on October 26, 1950.

XIII.

That the amount paid by Plaintiff and Petitioner New England Fish Company for the quarter ending September 30, 1950, as hereinabove set forth was $14.092.01, and at the time this was paid to Defendants the payment was accompanied by a letter dated October 9, 1950, which letter stated that the payment was being made under protest, and the letter also requested a refund of the amount so paid, to the extent of the credits which Plaintiff and Petitioner New England Fish Company claimed was due it and still claims is due it under the law, a copy of

which letter is hereto attached and made a part of this Petition and marked Exhibit "A"; and the Plaintiff and Petitioner Wards Cove Packing Company accompanied its payment made on October 26, 1950, by a similar letter on its behalf, a copy of which is hereto attached and made a part of this Petition and marked Exhibit "B," and its payment to Defendants for the quarter ending September 30, 1950, was $4,225.79.

XIV.

That at the time the payment was made on behalf of Plaintiff and Petitioner New England Fish Company as hereinabove set forth, and on October 11, 1950, Plaintiff and Petitioner New England Fish Company petitioned the Commission for an adjustment or refund of the amount paid to the extent of the credits which it claimed, and a copy of its petition is hereto attached and made a part of this Petition and marked Exhibit "C"; and that on October 26, 1950, Plaintiff and Petitioner Wards Cove Packing Company filed with the Commission a similar request for adjustment or refund of its payment, and a copy of its petition is attached to this Petition and made a part hereof and marked Exhibit "D."

XV.

That the petition and request of Plaintiff and Petitioner New England Fish Company was denied by the Employment Security Commission of Alaska, R. E. Sheldon, Executive Director, by letter in

writing addressed to Plaintiff and Petitioner New England Fish Company and dated October 13, 1950, a copy of which is hereto attached and made a part of this Petition and marked Exhibit "E"; and a similar denial was made to the request and petition of Plaintiff and Petitioner Wards Cove Packing Company by letter in writing dated October 26, 1950, and a copy thereof is hereto attached and made a part of this Petition and marked Exhibit "F."

XVI.

That thereafter and on October 13, 1950, Plaintiff and Petitioner New England Fish Company filed with the Employment Security Commission of Alaska a petition for a hearing on its request and petition for adjustment and refund of contributions paid for the quarter ending September 30, 1950, to the extent of the credits due it, and a copy of that petition is hereto attached and made a part of this Petition and marked Exhibit "G"; and that on October 27, 1950, Plaintiff and Petitioner Wards Cove Packing Company filed a similar application and petition for adjustment and refund of contributions paid with the Employment Security Commission of Alaska, a copy of which is hereto attached and made a part of this Petition and marked Exhibit "H."

XVII.

That on October 30, 1950, after such hearing as was agreed to between Plaintiffs and Petitioners and Defendants, and after all facts were presented

to the Commission and to the Defendants, the Defendants made a decision in writing denying the petition of Plaintiff and Petitioner New England Fish Company, and served a copy thereof on Plaintiff and Petitioner New England Fish Company, and a copy thereof is hereto attached and made a part of this Petition and marked Exhibit "I," and the Defendants refused to establish any experience rating credits for Plaintiff and Petitioner New England Fish Company and refused to make any refund or adjustment of the amounts so paid for the quarter ending September 30, 1950; and on the same date the Defendants and the Commission took a similar action with reference to Plaintiff and Petitioner Wards Cove Packing Company, and a copy of the Commission's decision in the case of the application of Plaintiff and Petitioner Wards Cove Packing Company is hereto attached and made a part of this Petition and marked Exhibit "J."

XVIII.

That Plaintiffs and Petitioners have exhausted all administrative remedies provided in the aforesaid laws.

XIX.

That Plaintiffs and Petitioners allege that in making the computation of surplus in the Unemployment Compensation Trust Fund as defined in the law, the Defendants wrongfully added to the contributions paid for the calendar year 1949 the amount of credits which had been assigned to all

employers during the calendar year 1949, and multiplied that amount by four, whereas the amount which should have been multiplied by four was the total of all contributions paid during the calendar year 1949, and that if the proper computation had been made, there would have been in the Fund a surplus as of the cut-off date available for further credits during the year commencing July 1, 1950, in the sum of $3,914,930.37 as set forth in Paragraph IX of this Petition.

Wherefore, Plaintiffs and Petitioners pray that the orders and decisions of the Defendants and the Employment Security Commission of Alaska dated October 30, 1950, be set aside and held for naught, and that the orders and decisions of the Defendants be reversed and that they be required to recompute the amount of surplus in the Unemployment Compensation Trust Fund as of March 15, 1950, as the amount which exceeds four times the sum of $1,370,514.14, which was the amount of money payments or contributions paid during the year 1949, and that the difference between that sum and the total amount in the Unemployment Compensation Trust Fund as of March 15, 1950, be applied as credits and assigned to all employers in accordance with the formula set up in Chapter 74, Session Laws of

Alaska, 1947, and that the Court make all necessary orders in the premises.

Dated at Juneau, Alaska, October 31, 1950.

/s/ H. L. FAULKNER,
FAULKNER, BANFIELD & BOOCHEVER,
Attorneys for Plaintiffs and Petitioners.

Four copies received this 31st day of October, 1950.

EMPLOYMENT SECURITY COMMISSION OF ALASKA,

By /s/ R. E. SHELDON,
Director and Chief Executive.

One copy received this 31st day of October, 1950.

/s/ JOHN H. DIMOND,
Assistant Attorney General for Alaska, Attorney for Defendants.

EXHIBIT "A"

New England Fish Co.
1828 Exchange Building
Seattle 4, Washington

October 9th, 1950

The Employment Security Commission of Alaska and R. E. Sheldon, Director and Chief Executive Thereof,

P. O. Box 2661
Juneau, Alaska.

Dear Sirs:

There is enclosed on behalf of the undersigned employer the Employer's Contribution Reports on your Form 1004 Revised, for the quarter ending September 30th, 1950. We also enclose our check in the sum of $14,092.01 in payment of the contributions which are prescribed under the provisions of the law (Section 51-5-5 A.C.L.A. 1949). This is at the rate of 2.7 per cent of the entire payroll.

The payment is made at that rate and in the amount hereinabove set forth and as represented by the enclosed check for the reason that no credits have been assigned by you for the year commencing July 1, 1950, as provided by Chapter 74, S.L.A. 1947 (Section 51-5-5 A.C.L.A. 1949). The undersigned is of the opinion that certain credits are due employers for the year commencing July 1, 1950, and that these credits should have been computed and notice thereof given the undersigned, thereby reducing the amount of the contribution paid here-

with to the extent of the credit for the quarter ended September 30th, 1950.

The amount enclosed is being paid under protest for the reason that credits have not been computed and given to the undersigned; and application is respectfully made to the Commission and to the Director and Chief Executive thereof to compute and assign the credits due the undersigned for the year 1950-51 and assign the credit which is due for the September quarter and refund the amount of the contribution enclosed to the extent of the credit due.

Very respectfully,
NEW ENGLAND FISH COMPANY,

By /s/ OSCAR BERGSETH,
General Supt.

EXHIBIT "B"

Wards Cove Packing Co., Inc.
Packers of Choice Alaska Salmon
Ketchikan, Alaska

Oct. 24, 1950

The Employment Security Commission and
R. E. Sheldon, Director and Chief Executive Thereof.
P. O. Box 2661
Juneau, Alaska.

Dear Sirs:

There is enclosed on behalf of the undersigned employer the Employer's Contribution Report on

your form 1004 Revised, for the quarter ending September 30, 1950. We also enclose our check in the sum of $4225.79 in payment of the contributions which are prescribed under the provisions of the law (Section 51-5-5 A.C.L.A. 1949). This is at the rate of 2.7 per cent of the entire payroll.

The payment is made at that rate and in the amount hereinabove set forth and as represented by the enclosed check for the reason that no credits have been assigned by you for the year commencing July 1, 1950, as provided by Chapter 74, S.L.A. 1947 (Section 51-5-5 A.C.L.A. 1949). The undersigned is of the opinion that certain credits are due employers for the year commencing July 1, 1950, and that these credits should have been computed and notice thereof given the undersigned, thereby reducing the amount of the contribution paid herewith to the extent of the credit for the quarter ending September 30, 1950.

The amount enclosed is being paid under protest for the reason that credits have not been computed and given to the undersigned, and application is respectfully made to the Commission and to the Director and Chief Executive thereof to compute and assign the credits due the undersigned for the year 1950-51 and assign the credit which is due for the September quarter and refund the amount of the contribution enclosed to the extent of the credit due.

Respectfully,

WARDS COVE PACKING CO.,

By /s/ H. A. BRINDLE,

Vice President.

EXHIBIT "C"

In the Matter of the Petition of New England Fish Company, a Corporation, for Adjustment of Claim for Refund and for Refund of Contributions Paid

To: Employment Security Commission
Territory of Alaska
Juneau, Alaska

The New England Fish Company, a corporation organized under the laws of the State of Maine, and doing business in Alaska, has paid, under the provisions of the Unemployment Compensation Law of Alaska, the sum of $14,092.01 covering contributions under the Alaska Unemployment Compensation Law for the quarter ended September 30, 1950. The payment was made under protest, which was in writing and signed by the company and dated October 9, 1950, and reference is made thereto. This letter of protest also contained a request for a refund of the amount paid to the extent of the credits which the Petitioner claims should have been allowed by you and credited against the contribution for the September quarter, 1950, under the provisions of Chapter 74, Session Laws of Alaska, 1947 (51-5-5 A.C.L.A. 1949).

The Petition for adjustment or refund has been denied by the Executive Director.

The reasons for this petition for adjustment or

refund are contained in the letter of protest referred to hereinabove.

Dated at Juneau, Alaska, October 11, 1950.

NEW ENGLAND FISH
COMPANY,

By /s/ H. L. FAULKNER,
Its Attorney and Agent.

EXHIBIT "D"

October 26, 1950

Employment Security Commission
Territory of Alaska
Juneau, Alaska

In the Matter of the Petition of Wards Cove Packing Company, a Corporation, for Adjustment of Claim for Refund and for Refund of Contributions Paid.

Dear Sirs:

The Wards Cove Packing Company, a corporation organized under the laws of Alaska, and doing business in Alaska, has paid, under the provisions of the Unemployment Compensation Law of Alaska, the sum of $4,225.79, covering contributions for the quarter ended September 30, 1950. The payment was made under protest, which was in writing and signed by the company, and dated October 24, 1950, and reference is made thereto. This letter of protest also contained a request for a refund of the amount paid to the extent of the credits

which the petitioner claims should have been allowed by you and credited against the contribution for the September quarter, 1950, under the provisions of Chapter 74, Session Laws of Alaska, 1947 (51-5-5 A.C.L.A. 1949).

It is respectfully requested that an adjustment be made as requested in the letter of protest and request for refund, and that a refund be made to the company for an amount equal to the credits which are due the company for the September quarter, 1950.

Very truly yours,
WARDS COVE PACKING COMPANY,

By /s/ H. L. FAULKNER,
Its Attorney and Agent.

EXHIBIT "E"

3298

Juneau, Alaska
October 13, 1950

New England Fish Company
1828 Exchange Building
Seattle 4, Washington

Attention of Mr. Oscar Bergseth
General Superintendent

Gentlemen:

Receipt is acknowledged of contribution reports and wage schedules for the quarter ending Septem-

ber 30, 1950, covering your five branch accounts, and your check in payment therefor in the amount of $14,092.01, such payment being made under protest.

Receipt is also acknowledged of Claim for Refund of $14,092.01 being the amount of contributions paid as outlined above, such claim being made under the provisions of Section 51-5-14(f) ACLA 1949.

Your claim is presented on the premise there was more than four times the amount of 1949 contributions in the unemployment compensation fund on March 15, 1950, and in that event the law provides for experience rating credits being made available for qualified employers, and, by inference, that your Corporation is such an employer.

Claim for Refund of contributions covering your five branch accounts for the quarter ending September 30, 1950, in the amount of $14,092.01 is hereby denied. This denial is based on the fact that there was not a surplus in the fund on March 15, 1950, and, therefore, there were no amounts to be distributed among otherwise qualified employers. The facts are that there was a balance in the unemployment compensation fund in the amount of $9,397,006.93; the amount of contributions reported on and paid for, applicable to the calendar year 1949, was $2,386,932.63, and four times this latter figure is more than the fund balance.

A copy of this letter is being handed to your Counsel, Faulkner, Banfield and Boochever, attorneys at Juneau, Alaska.

You are advised that if you do not agree with this denial of claim for refund you may file a

petition in writing with the Commission for a hearing thereon, such petition to be submitted within thirty (30) days after October 13, 1950, the date of mailing of this notification of denial.

Very truly yours,

EMPLOYMENT SECURITY COMMISSION OF ALASKA,

R. E. SHELDON,
Executive Director.

By /s/ G. F. CRISMAN,
G. F. CRISMAN,
Coordinator.

GFC:ms

EXHIBIT "F"

Territory of Alaska
Employment Security Commission
Box 2661, Juneau

R. E. Sheldon
Executive Director
Territorial Employment Service

Affiliated With
U. S. Employment Service
Unemployment Insurance Division

October 26, 1950

In reply refer to: 3911
Faulkner, Banfield & Boochever
P. O. Box 1121
Juneau, Alaska

Gentlemen:

Attention: Mr. H. L. Faulkner

Receipt is acknowledged of contribution reports and wage schedules for quarter ending September 30, 1950, covering the two branch accounts of the Wards Cove Packing Co., Inc., and its check in payment therefor in the amount of $4,225.79.

Receipt is also acknowledged of Claim for Refund of $4,225.79 being the amount of contributions paid as outlined above, such claim being made under the provisions of Section 51-5-14 (f) ACLA 1949.

The claim is presented on the premise there was more than four times the amount of 1949 contributions in the unemployment compensation fund on March 15, 1950, and in that event the law provides

for experience rating credits being made available for qualified employers, and, by inference, that your Corporation is such an employer.

Claim for Refund of contributions for the Wards Cove Packing Co., Inc., for the quarter ending September 30, 1950, in the amount of $4,225.79 is hereby denied. This denial is based on the fact that there was not a surplus in the fund on March 15, 1950, and, therefore, there were no amounts to be distributed among otherwise qualified employers. The facts are that there was a balance in the unemployment compensation fund in the amount of $9,397,006.93; the amount of contributions reported on and paid for, applicable to the calendar year 1949, was $2,386,932.63, and four times this latter figure is more than the fund balance.

You are advised that if this denial of claim for refund is not agreed to a petition in writing to the Commission for hearing thereon may be submitted within 30 days after this date, which is date of mailing of this notification of denial.

Very truly yours,
EMPLOYMENT SECURITY
COMMISSION OF ALASKA,
R. E. SHELDON,
Executive Director.

By /s/ G. F. CRISMAN,
Coordinator.

GFC:ps

EXHIBIT "G"

Petition of New England Fish Company, a Corporation, for a Hearing on Its Petition for Adjustment and Refund of Contributions Paid for September Quarter 1950

To: Employment Security Commission
Territory of Alaska
Juneau, Alaska

The New England Fish Company, a corporation organized under the laws of the State of Maine, and doing business in Alaska, respectfully represents to the Commission:

1. That the Petitioner is a corporation organized under the laws of the State of Maine, and at all times mentioned herein, authorized to do business in the Territory of Alaska, and it is and was at all times mentioned herein an employer within the meaning of the Alaska Unemployment Compensation Law, and it has an annual payroll in the Territory of Alaska in excess of $800,000.00, and it has paid contributions to the Unemployment Compensation Fund as required by law since the date of the passage of the Alaska Unemployment Compensation Act.

2. That under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5 A.C.L.A. 1949), a system of experience rating credits is set up, which system is applicable to Petitioner, and these credits are based on a formula contained in the law, and they are computed by the

Commission and the Director and Chief Executive thereof, and they were so computed and allowed each quarter from July 1, 1947, until and including June 30, 1950.

3. That in May, 1950, the Petitioner was informed that no further credits would be allowed by the Commission, for the reason that there was not sufficient surplus in the Unemployment Compensation Trust Fund as of March 15, 1950, which was the cut-off date established by the Commission under the provisions of the law hereinabove referred to, and that the moneys in the Unemployment Compensation Trust Fund as of the cut-off date did not exceed four times the amount of contributions paid on or before the cut-off date for the preceding calendar year.

4. That in computing the contributions paid by all employers for the preceding calendar year, or the calendar year 1949, the Commission added the total contributions paid in money during the year 1949 to the amount of credits allowed during the year 1949 and multiplied this combination by four, and by doing so arrived at a figure of $9,547,730.52, whereas at the cut-off date there was in the Unemployment Compensation Trust Fund the sum of $9,397,006.93, which, under the method used by the Commission, would result in a deficit in the Unemployment Compensation Trust Fund.

5. That the total amount of contributions paid in money by all employers during the calendar year 1949 was $1,370.519.14, and four times that amount

is $5,482,076.56, so that if the Commission had computed the surplus as four times the amount of contributions paid in money by all employers during the calendar year 1949, there would be the sum of $3,914,930.37 in the fund in excess of the required surplus, and which amount would be available for credits during the year commencing July 1, 1950, and ending June 30, 1951.

6. That on October 11, 1950, the Petitioner paid to the Employment Security Commission the sum of $14,092.01 covering contribution on its payroll for the months of July, August and September at the rate of 2.7 per cent, and this was paid under protest with an application for a refund to the extent of the credits which should have been allowed Petitioner, and the payment was accompanied by the returns on behalf of Petitioner as required by law, and all supporting documents.

7. Petitioner is entitled to the credits for the September quarter 1950 as provided by the laws of the Territory, and the contribution paid by it under protest, as hereinabove set forth, should be refunded to the extent of the credits which will be allowable to Petitioner, and which can be computed only by the Commission, but Petitioner believes, and therefore alleges, that these credits are in excess of $7,000.00.

8. That application has been made to the Commission, on October 11, 1950, for a refund of the contribution to the extent hereinabove set forth, and the application has been denied.

Wherefore, Petitioner prays that the Commission grant a hearing to it, and upon the hearing, order the credits set up as provided by law, and that the amount of the credit be refunded to the Petitioner from the amount of contribution paid in cash for the September quarter, as hereinabove set forth.

Dated at Juneau, Alaska, October 13, 1950.

NEW ENGLAND FISH COMPANY,

By /s/ H. L. FAULKNER,
Its Attorney and Agent.

EXHIBIT "H"

Petition of Wards Cove Packing Company, a Corporation, for a Hearing on Its Petition for Adjustment and Refund of Contributions Paid for the September Quarter 1950

To: Employment Security Commission
Territory of Alaska
Juneau, Alaska

The Wards Cove Packing Company, a corporation organized under the laws of Alaska and doing business in Alaska, respectfully represents to the Commission:

1. That the Petitioner is a corporation organized under the laws of the Territory of Alaska and at all times mentioned herein, authorized to do business in Alaska, and it is and was at all times

mentioned herein an employer within the meaning of the Alaska Unemployment Compensation Law, and it has an annual payroll in the Territory of Alaska in excess of $190,000.00, and it has paid contributions to the Unemployment Compensation Fund as required by law since the date of the passage of the Alaska Unemployment Compensation Act.

2. That under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5 A.C.L.A. 1949), a system of experience rating credits is set up, which system is applicable to Petitioner, and these credits are based on a formula contained in the law, and they are computed by the Commission and the Director and Chief Executive thereof, and they were so computed and allowed each quarter from July 1, 1947, until and including June 30, 1950.

3. That in May, 1950, the Petitioner was informed that no further credits would be allowed by the Commission, for the reason that there was not sufficient surplus in the Unemployment Compensation Trust Fund as of March 15, 1950, which was the cut-off date established by the Commission under the provisions of the law hereinabove referred to, and that the moneys in the Unemployment Compensation Trust Fund as of the cut-off date did not exceed four times the amount of contributions paid on or before the cut-off date for the preceding calendar year.

4. That in computing the contributions paid by all employers for the preceding calendar year, or the calendar year 1949, the Commission added the total contributions paid in money during the year 1949 to the amount of credits allowed during the year 1949 and multiplied this combination by four, and by doing so arrived at a figure of $9,547,730.52, whereas at the cut-off date there was in the Unemployment Compensation Trust Fund the sum of $9,397,006.93, which, under the method used by the Commission, would result in a deficit in the Unemployment Compensation Trust Fund.

5. That the total amount of contributions paid in money by all employers during the calendar year 1949 was $1,370,519.14, and four times that amount is $5,482,076.56, so that if the Commission had computed the surplus as four times the amount of contributions paid in money by all employers during the calendar year 1949, there would be the sum of $3,914,930.37 in the fund in excess of the required surplus, and which amount would be available for credits during the year commencing July 1, 1950, and ending June 30, 1951.

6. That on October 26, 1950, the Petitioner paid to the Employment Security Commission of Alaska the sum of $4,225.79, covering contribution on its payroll for the months of July, August and September, 1950, at the rate of 2.7 per cent as demanded by the Commission, and this was paid under protest with an application for a refund to the extent of the credits which should have been allowed

Petitioner, and the payment was accompanied by the returns on behalf of Petitioner as required by law, and all supporting documents.

7. Petitioner is entitled to the credits for the September quarter, 1950, as provided by the laws of the Territory, and the contribution paid by it under protest, as hereinabove set forth, should be refunded to the extent of the credits which will be allowable to Petitioner, and which can be computed only by the Commission, but Petitioner believes, and therefore alleges, that these credits are in excess of $2,000.00.

8. That application has been made to the Commission on October 26, 1950, for a refund of the contribution to the extent hereinabove set forth, and the application has been denied.

Wherefore, Petitioner prays that the Commission grant a hearing to it, and upon the hearing, order the credits set up as provided by law, and that the amount of the credit be refunded to the Petitioner from the amount of contribution paid in cash for the September quarter, as hereinabove set forth.

Dated at Juneau, Alaska, October 27, 1950.

WARDS COVE PACKING COMPANY,

By /s/ H. L. FAULKNER,
Its Attorney and Agent.

EXHIBIT I

Territory of Alaska
Employment Security Commission
Box 2661, Juneau

October 30, 1950

In reply refer to: 3298.
New England Fish Company
c/o Faulkner, Banfield & Boochever
P. O. Box 1121
Juneau, Alaska

Attention of Mr. H. L. Faulkner, Its Attorney and Agent

Gentlemen:

Receipt is acknowledged of Petition for Hearing filed by you October 13, 1950, pursuant to the provisions of Section 51-5-14 (f) ACLA 1949.

This petition was submitted following this Commission's denial of your Claim for Refund in the amount of $14,092.01, covering contributions paid at the rate of 2.7 per centum on wages payable subject to the Employment Security Law for the calendar quarter ending September 30, 1950, said denial having been mailed to you October 13, 1950.

The aforesaid Claim for Refund was submitted to this Commission "for the reason that the law provides for continuance of credits until the surplus fund falls below four times the amount of contributions for the previous year, to the cut-off date, and at the cut-off date the surplus amounted to $3,914,-930.40, more than four times the contributions paid by all employers for the preceding year."

The Commission's letter of denial, dated October 13, 1950, advised that the denial "is based on the fact that there was not a surplus in the fund on March 15, 1950, and, therefore, there were no amounts to be distributed among otherwise qualified employers. The facts are that there was a balance in the unemployment compensation fund in the amount of $9,397,006.93; the amount of contributions reported on and paid for, applicable to the calendar year 1949, was $2,386,932.63, and four times this latter figure is more than the fund balance."

Your petition makes eight representations to the Commission. With respect to Representation 1, you are advised that your taxable payroll in the Territory of Alaska for 1949 was $739,880.58; for 1948, $794,856.84; for 1947, $701,889.58, and for 1946, $790,590.48. None of these amounts exceeds $800,000.00 as represented. Other parts of Representation 1 are conceded.

With respect to Representation 2, computations of experience rating credits and allowance of credits to qualified employers were made with respect to the three credit years beginning July 1, 1947, and ending June 30, 1950, all in accordance with the provisions of Section 51-5-5 (c) of the Law, supra. In the first credit year, July 1, 1947, through June 30, 1948, no experience rating credit having previously been distributed, all contributions having been made in cash with respect to the calendar year 1946, contributions paid with respect to payrolls in the year 1946 reported on by March 15th and paid by June 30, 1947, were used in the formula of

"surplus." For the second credit year, July 1, 1948, through June 30, 1949, experience rating credit having been distributed and being applicable to the second half of the calendar year 1947, contributions paid with respect to payrolls in the calendar year 1947—both "cash" and credits applied—were used in the formula of "surplus." For the third credit year, July 1, 1949, through June 30, 1950, experience rating credit having been distributed and being appliable to the entire calendar year 1948—both "cash" and credits applied, were used in the formula of "surplus." The same administrative determination was made with respect to the potential credit year July 1, 1950, through June 30, 1951, and this resulted in the fact there was no surplus, as defined, distributable. No protest with respect to previous credit years has been received from any employer. For your information, it is a matter of record that the amount of experience credits distributed for the credit year 1949-50, was $1,390,480.39 based upon the previously uncontested administrative determination. Had your contention been followed that only "cash" contributions be used in this determination, the amount of credit distributable would have been only $845,067.46. Your individual credit for the credit year 1949-50 was $17,645.82, all of which you used in applying it against the 2.7 per centum rate on wages payable; under your contention, only $10,724.28 would have been credited to your account.

With respect to Representation 3, this Commission notified all employers of record subject to the

Employment Security Law under date of April 28, 1950, by means of a Mimeographed letter, that there was not a surplus in the fund as of March 15, 1950.

With respect to Representation 4, this Commission determined the amount of contributions due and reported on by all employers by March 15, 1950, which were applicable to the calendar year 1949, and the amount so determined was $2,386,932.63. The Fund balance as of March 15, 1950, was $9,397,006.93. The formula for "surplus" was applied and it was found that four times the amount of contributions applicable to the calendar year 1949, which were reported by the cut-off date March 15, 1950, exceeded the Fund balance.

With respect to Representation 5, we concur that the amount of contributions paid in "cash" by employers on or before March 15, 1950, with respect to wages payable in the calendar year 1949, was $1,370,519.14 and that four times this amount is $5,482,076.56, but our contention is that this is not germane to the formula to be used in arriving at the amount of a "surplus." With regard to the balance of this Representation, you are advised that it was and is our administrative determination that if the Commission had used the hypothesis outlined by you in applying the formula for "surplus," it would be placing an incorrect meaning on the plain language of the statute.

The word "contributions" is defined as "As used in this Act, unless the context clearly requires otherwise, 'contributions' means the money payments to the Alaska unemployment compensation fund

required by this Act." The amount of "money payments" in this definition is not determinable, but elsewhere in the Law, there is prescribed a rate of contributions, such rate being 2.7 per centum after December 31, 1937, with respect to employment. To determine what basis should be used to apply the 2.7 per centum rate, we must examine other definitions, such as "employment," "wages," "remuneration," and so on. The word "contributions" occurs in the definition of "qualified employer." In this definition, you will notice that "qualified employer" means any employer who ". . . had employment for which remuneration was payable in each of the four consecutive calendar years preceding the computation date (January 1st) and who filed any wage reports required thereon on or before the cut-off date (March 15th), and has paid all contributions due on or before the effective date (June 30th)."

The word "contributions" appears in the definition of "surplus." " 'Surplus' means the lesser of that amount by which the moneys . . . exceed four times the amount of contributions paid . . . with respect to the payrolls reported by all employers on or before said cut-off date . . ., or an amount equal to 60% of the contributions so paid."

Employers' payrolls are the determining factor throughout the provisions of the experience rating amendment to the Law. Payrolls of qualified and non-qualified employers are used in the formula for distribution of a surplus. Some employers who are qualified employers, as defined, will not participate in the distribution of a surplus if their pay-

rolls have declined in preceding calendar years in excess of 79 per centum, whereas other qualified employers will participate in the distribution of a surplus if their payrolls have not declined at all, or have declined in varying lesser degrees.

With respect to Representation 6, the Commission concurs.

With respect to Representation 7, the Commission does not concur.

With respect to Representation 8, the Commission concurs.

Inasmuch as no new facts have been presented in your Petition for Hearing, other than were contained in your claim for Refund, it is our opinion that no good purpose would be served by a hearing before the Commission. For this reason, and without prejudice, your Petition for Hearing on the denial of your claim for refund is herewith denied. This denial of your petition exhausts your administrative remedies under the Act. A petition for refund may now be presented to the United States District Court in accordance with Section 51-5-14 (f), supra.

Very truly yours,

/s/ R. E. SHELDON,
R. E. SHELDON,
Executive Director.

RES:s

EXHIBIT J

Territory of Alaska
Employment Security Commission
Box 2661, Juneau

October 30, 1950

In reply refer to: 3911
Wards Cove Packing Company
c/o Faulkner, Banfield & Boochever
P. O. Box 1121
Juneau, Alaska

Attention of Mr. H. L. Faulkner, Its Attorney and Agent

Gentlemen:

Receipt is acknowledged of Petition for Hearing filed by you October 27, 1950, pursuant to the provisions of Section 51-5-14 (f) ACLA 1949.

This petition was submitted following this Commission's denial of your Claim for Refund in the amount of $4,225.79, covering contributions paid at the rate of 2.7 per centum on wages payable subject to the Employment Security Law for the calendar quarter ending September 30, 1950, said denial having been mailed to you October 26, 1950.

The aforesaid Claim for Refund was contained in your letter of October 26, 1950, and was based on your opinion that certain credits are due employers for the (credit) year commencing July 1, 1950, and that these credits should have been computed and notice thereof given to you, thereby reducing the amount of contributions which you paid with respect to the quarter ending September 30, 1950.

The Commission's letter of denial, dated October 26, 1950, advised that the denial "is based on the fact that there was not a surplus in the fund on March 15, 1950, and, therefore, there were no amounts to be distributed among otherwise qualified employers. The facts are that there was a balance in the unemployment compensation fund in the amount of $9,397,006.93; the amount of contributions reported on and paid for, applicable to the calendar year 1949, was $2,386,932.63, and four times this latter figure is more than the fund balance."

Your petition makes eight representations to the Commission. With respect to Representation 1, you are advised that your taxable payrolls in the Territory of Alaska for 1948-49 were in excess of $190,000, but in previous years, were considerably less. Other parts of Representation 1 are conceded.

With respect to Representation 2, computations of experience rating credits and allowance of credits to qualified employers were made with respect to the three credit years beginning July 1, 1947, and ending June 30, 1950, all in accordance with the provisions of Section 51-5-5 (c) of the Law, supra. In the first credit year, July 1, 1947, through June 30, 1948, no experience rating credit having previously been distributed, all contributions having been made in cash with respect to the calendar year 1946, contributions paid with respect to payrolls in the year 1946 reported on by March 15th and paid by June 30, 1947, were used in the formula of "surplus." For the second credit year, July 1, 1948, through June 30, 1949, experience rating

credit having been distributed and being applicable to the second half of the calendar year 1947, contributions paid with respect to payrolls in the calendar year 1947—both "cash" and credits applied—were used in the formula of "surplus." For the third credit year, July 1, 1949, through June 30, 1950, experience rating credit having been distributed and being appliable to the entire calendar year 1948—both "cash" and credits applied, were used in the formula of "surplus." The same administrative determination was made with respect to the potential credit year July 1, 1950, through June 30, 1951, and this resulted in the fact there was no surplus, as defined, distributable. No protest with respect to previous credit years has been received from any employer. For your information, it is a matter of record that the amount of experience credits distributed for the credit year 1949-50, was $1,390,480.39 based upon the previously uncontested administrative determination. Had your contentions been followed that only "cash" contributions be used in this determination, the amount of credit distributable would have been only $845,-067.46.

Your credit for the credit year 1949-50, was $5,-808.19. You absorbed the credit remaining in the account of Red Salmon Canning Company as of January 1, 1950, when you took over the assets of that corporation. The amount of credit for the credit year 1949-50 for the Red Salmon Canning Company was $17,711.98; there was a balance remaining of $9,862.62, unapplied credit, which you

absorbed, making a total credit available to you for the credit year of $15,670.81. Under your contention, your credit would have been reduced to $3,529.94. Red Salmon Canning Company's credit would have been reduced to $10,764.49; having used $7,849.36 of it in the latter half of the calendar year 1949, only $2,915.13 would have remained to be absorbed by you; therefore, total credit available to you with respect to the credit year 1949-50 would have been only $6,445.07, not $15,670.81.

With respect to Representation 3, this Commission notified all employers of record subject to the Employment Security Law under date of April 28, 1950, by means of a Mimeographed letter, that there was not a surplus in the fund as of March 15, 1950.

With respect to Representation 4, this Commission determined the amount of contributions due and reported on by all employers by March 15, 1950, which were applicable to the calendar year 1949, and the amount so determined was $2,386,932.63. The Fund balance as of March 15, 1950, was $9,397,006.93. The formula for "surplus" was applied and it was found that four times the amount of contributions applicable to the calendar year 1949, which were reported by the cut-off date March 15, 1950, exceeded the Fund balance.

With respect to Representation 5, we concur that the amount of contributions paid in "cash" by employers on or before March 15, 1950, with respect to wages payable in the calendar year 1949, was $1,370,519.14 and that four times this amount is $5,482,076.56, but our contention is that this is not germane to the formula to be used in arriving at

the amount of a "surplus." With regard to the balance of this Representation, you are advised that it was and is our administrative determination that if the Commission had used the hypothesis outlined by you in applying the formula for "surplus," it would be placing an incorrect meaning on the plain language of the statute.

The word "contributions" is defined as "As used in this Act, unless the context clearly requires otherwise, 'contributions' means the money payments to the Alaska unemployment compensation fund required by this Act." The amount of "money payments" in this definition is not determinable, but elsewhere in the Law, there is prescribed a rate of contributions, such rate being 2.7 per centum after December 31, 1937, with respect to employment. To determine what basis should be used to apply the 2.7 per centum rate, we must examine other definitions such as "employment," "wages," "remuneration," and so on. The word "contributions" occurs in the definition of "qualified employer." In this definition, you will notice that "qualified employer" means any employer who ". . . had employment for which remuneration was payable in each of the four consecutive calendar years preceding the computation date (January 1st) and who filed any wage reports required thereon on or before the cut-off date (March 15th), and has paid all contributions due on or before the effective date (June 30th)."

The word "contributions" appears in the definition of "surplus." " 'Surplus' means the lessor of that amount by which the moneys . . . exceed four times the amount of contributions paid . . . with

respect to the payrolls reported by all employers on or before said cut-off date . . ., or an amount equal to 60% of the contributions so paid."

Employers' payrolls are the determining factor throughout the provisions of the experience rating amendment to the Law. Payrolls of qualified and non-qualified employers are used in the formula for distribution of a surplus. Some employers who are qualified employers, as defined, will not participate in the distribution of a surplus if their payrolls have declined in preceding calendar years in excess of 79 per centum, whereas other qualified employers will participate in the distribution of a surplus if their payrolls have not declined at all, or have declined in varying lesser degrees.

With respect to Representation 6, the Commission concurs.

With respect to Representation 7, the Commission does not concur.

With respect to Representation 8, the Commission concurs.

Inasmuch as no new facts have been presented in your Petition for Hearing, other than were contained in your Claim for Refund, it is our opinion that no good purpose would be served by a hearing before the Commission. For this reason, and without prejudice, your Petition for Hearing on the denial of your claim for refund is herewith denied. This denial of your petition exhausts your administrative remedies under the Act. A petition for refund may now be presented to the United States

District Court in accordance with Section 51-5-14 (f), supra.

Very truly yours,
/s/ R. E. SHELDON,
R. E. SHELDON,
Executive Director.

RES:s

[Endorsed]: Filed October 31, 1950.

[Title of District Court and Cause.]

Civil Cause No. 6377-A

STIPULATION

It Is Hereby Stipulated and Agreed between New England Fish Company, a corporation, and Wards Cove Packing Company, a corporation, the above-named Plaintiffs and Petitioners, through their attorney, H. L. Faulkner, and the above-named Defendants, through their attorney, John Dimond, Assistant Attorney General of Alaska, that all actions of the Employment Security Commission of Alaska referred to in the Petition for Review of Decision of Employment Security Commission of Alaska on file in the above-entitled cause be and they are hereby considered the actions and decisions of the full Employment Security Commission of Alaska, and the Plaintiffs and Petitioners accept the actions and decisions and findings of the Executive Director as those of the full Commission, and Plaintiffs and Petitioners waive any right they may have to have the full Commission act upon the Petition for a Hearing on the Request and Petition for

Adjustment and Refund of Contributions Paid for the Quarter Ending September 30, 1950; and

It Is Stipulated between the parties hereto that in the above-entitled cause and petition, the Court shall consider the Petition for Refund and Adjustment made by Plaintiffs and Petitioners, and at the hearing either party may present evidence, and that the Court may decide the matter on the issue raised in the petitions of Plaintiffs and Petitioners in their respective petitions of October 13, 1950, and October 27, 1950, Exhibits "G" and "H" referred to in Paragraph XVI of the Petition for Review of Decision of Employment Security Commission of Alaska, and copies of which are made a part of the Petition.

It Is Further Stipulated that a hearing may be had upon the Petition and such answer thereto as the Defendants desire to file before the Court at Juneau during the week beginning November 6 and as soon as the matter may be heard by the Court.

Dated at Juneau, Alaska, the 31st day of October, 1950.

/s/ H. L. FAULKNER,
FAULKNER, BANFIELD & BOOCHEVER,
Attorneys for Plaintiffs and Petitioners.

/s/ JOHN H. DIMOND,
Assistant Attorney General of Alaska, Attorney for Defendants.

[Endorsed]: Filed October 31, 1950.

[Title of District Court and Cause.]

Civil Cause No. 6356-A

ANSWER

To the complaint herein, defendants above-named, through their attorneys, answer as follows, to wit:

First Defense

1. Answering Paragraph I of the complaint, defendants admit the allegations contained therein.

2. Answering Paragraph II of the complaint, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. Answering Paragraph III of the complaint, defendants admit the allegations contained therein. Defendants allege, however, that the figure of $842,501.02 given in said Paragraph III as the approximate annual payroll in Alaska for the plaintiff New England Fish Company, is the amount of said plaintiff's payroll for the "credit year" July 1, 1949, to June 30, 1950; and that the payroll for said plaintiff for the calendar year January 31, 1949, to December 31, 1949, which is the payroll with respect to which contributions become payable under the Alaska Employment Security Law (§51-5-5 ACLA 1949), was $739,880.58.

4. Answering Paragraph IV of the complaint, defendants admit the allegations contained therein.

5. Answering Paragraph V of the complaint, defendants admit the allegations contained therein, with the exception of the figure of $4,313.88, mentioned in the last line of said Paragraph V, and allege that said figure should be $4,307.83. Defendants allege, however, that although plaintiff, New England Fish Company, did make contributions of $5,101.72 in cash and $17,645.88 in credits for the "credit year" July 1, 1949, to June 30, 1950, that its contributions for the calendar year January 1, 1949, to December 31, 1949, which were based on its payroll of $739,880.58, for said calendar year, were in the amount of $4,903.24, in cash and $15,073.52, in experience rating credits; and that contributions based on a calendar year payroll, and not those based on a credit year payroll, enter into the computation of "surplus" in §51-5-5(c) (1) (G) ACLA 1949.

6. Answering Paragraph VI of the complaint, defendants admit the allegations contained therein with the following exceptions:

a. Defendants deny the interpretation placed by plaintiffs on the Alaska Employment Security Law to the effect that said law requires employers to pay into the Alaska Unemployment Compensation Fund 2.7 per cent "of its payroll for each quarter year," and defendants allege that said law requires each employer to pay into said Fund 2.7 per cent of the wages payable by him with respect to employment during the calendar year.

b. Defendants deny the interpretation of the

Employment Security Law, as alleged by plaintiffs, to the effect that credits are assigned to qualified employers until the amount of cash contribution required to be paid reaches a point where "the total amount in the Unemployment Compensation Trust Fund falls below four times the amount of contributions paid on or before the cut-off date * * * for the preceding calendar year, or below 60% of the contributions so paid for such calendar year;" and defendants allege that a correct statement of the law in this respect is as follows:

As soon as practicable after June 30th of each year, credits are assigned to qualified employers provided:

(1) That there exists in the Unemployment Compensation Trust Fund a "surplus" which consists of the lesser of (a) that amount by which the moneys in said Fund, as of the cut-off date exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year, or (b) an amount equal to 60% of the contributions so paid for the preceding calendar year; and

(2) That the amount of such surplus is at least 10% of the amount of contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year.

7. Answering Paragraph VII of the complaint, defendants deny the allegations contained therein, and allege that the correct definition of "contributions," as contained in §51-5-1 ACLA 1949, is as follows:

"As used in this Act, unless the context clearly requires otherwise—'contributions' mean the money payments to the Alaska unemployment compensation fund required by this Act."

8. Answering Paragraph VIII of the complaint, defendants admit the allegations contained therein with the exception of the assertion that "defendants established a 'cut-off' date * * *;" and defendants allege, in this respect, that the "cut-off" date above referred to is established by law (§51-5-5(c) (1) (D) ACLA 1949) and is not established by defendants.

9. Answering Paragraph IX of the complaint, defendants deny the allegations contained therein and allege as follows: (a) the "cut-off" date is established by law, and not by defendants; (b) the amount of $9,397,006.93, which was the total amount in the Unemployment Compensation Trust Fund on March 15, 1950, is not the "surplus" as defined in the law; (c) the total contributions paid by all employers during the calendar year 1949, amounted to $2,386,932.63; and (d) as of the cut-off date (March 15, 1950) no "surplus," as that term is defined in the law, existed in the said Fund.

10. Answering Paragraph X of the complaint, defendants deny the allegations contained therein.

11. Answering Paragraph XI of the complaint, defendants admit the allegations contained therein.

12. Answering Paragraph XII of the complaint, defendants admit that no credits will be issued to

plaintiffs for the credit year beginning July 1, 1950, and that plaintiffs, for each quarter of said credit year, will be obliged to pay cash contributions which cannot be recovered or credited against future contributions due from them; but defendants deny all other allegations contained therein.

13. Answering Paragraph XIII of the complaint, defendants deny the allegations contained therein.

Second Defense

For a second and separate defense, defendants allege (a) That the total "contributions" paid for the calendar year 1949 amounted to $2,386,932.63, and that this amount included not only cash but credits previously issued to qualified employers; and that based on this amount of contributions, no "surplus," as that term is defined in §51-5-5(c) (1) (G) ACLA 1949, existed in the Unemployment Compensation Trust Fund as of the cut-off date of March 15, 1950, and therefore no credits could be issued for the credit year beginning July 1, 1950.

(b) That the defendants' interpretation of "contributions" as including not only cash payments but also credits is reasonable and in conformity with the objective and purpose of the Alaska Employment Security Law.

(c) That the plaintiff's interpretation of "contributions" as including only cash payments, and not credits, would tend to defeat the purpose of the Alaska Employment Security Law and endanger the solvency of the Employment Compensation Fund, and is therefore incorrect.

Third Defense

For a third and separate defense, defendants allege that under the provisions of the Alaska Employment Security Law, experience rating credits for the credit year July 1, 1948, to June 30, 1949, were issued to plaintiff, New England Fish Company, in the amount of $15,371.38; that this amount was based on defendants' interpretation of the word "contributions" as used in the definition of the word "surplus" (§51-5-5(c) (1) (G) ACLA 1949), as including not only cash payments but experience rating credits, and that if plaintiffs' interpretation of "contributions" as including only cash payments had been followed by defendants, the amount of credits to be issued to plaintiff, New England Fish Company, would have been $15,465.78. That for the credit year July 1, 1949, to June 30, 1950, experience rating credits were issued to plaintiff, New England Fish Company, in the amount of $17,645.82; that this amount was based upon defendants' interpretation of "contributions" as mentioned above, and that if plaintiffs' interpretation had been followed, the amount of credits to be issued would have been $10,724.28.

That for the credit year July 1, 1948, to June 30, 1949, experience rating credits in the amount of $4,025.30, were issued to plaintiff, Wards Cove Packing Company; that this amount of credits was based upon defendants' interpretation of "contributions" as mentioned above; that if plaintiffs' interpretation of "contributions" had been followed, the amount of credits to be issued would have been

$4,048.56. That for the credit year July 1, 1949, to June 30, 1950, plaintiff, Wards Cove Packing Company, obtained credits in the amount of $15,670.81; that this amount was based upon defendants' interpretation of "contributions" as mentioned above; that if plaintiffs' interpretation had been followed, credits in the amount of $6,445.07, would be all that would have been issued for that credit year.

That since plaintiffs have in past years accepted credits issued according to defendants' interpretation of "contributions" as referred to above, they cannot now maintain that defendants' interpretation is erroneous.

Wherefore, defendants having fully answered the complaint herein, pray for an order denying plaintiffs' application for a mandatory injunction, and for an order dismissing the complaint.

J. GERALD WILLIAMS,
Attorney General of Alaska,

/s/ JOHN H. DIMOND,
Assistant Attorney General,
Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed November 1, 1950.

[Title of District Court and Cause.]

Civil Cause No. 6377-A

ANSWER TO PETITION

To the petition for review herein, defendants above named, through their attorneys, answer as follows, to wit:

First Defense

1. Answering Paragraph I of the petition, defendants admit the allegations contained therein.

2. Answering Paragraph II of the petition, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

3. Answering Paragraph III of the petition, defendants admit the allegations contained therein.

4. Answering Paragraph IV of the petition, defendants admit the allegations contained therein.

5. Answering Paragraph V of the petition, defendants admit the allegations contained therein.

6. Answering Paragraph VI of the petition, defendants admit the allegations contained therein with the following exceptions:

Defendants deny the interpretation of the Employment Security Law, as alleged by plaintiffs and petitioners, to the effect that credits are assigned to qualified employers until the amount of cash contribution required to be paid reaches a point where "the total amount in the Unemployment Compen-

sation Trust Fund falls below four times the amount of contributions paid on or before the cut-off date * * * for the preceding calendar year, or below 60% of the contributions so paid for such calendar year;" and defendants allege that a correct statement of the law in this respect is as follows:

As soon as practicable after June 30th of each year, credits are assigned to qualified employers provided:

(1) That there exists in the Unemployment Compensation Trust Fund a "surplus" which consists of the lesser of (a) that amount by which the moneys in said Fund, as of the cut-off date, exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year, or (b) an amount equal to 60% of the contributions so paid for the preceding calendar year; and

(2) That the amount of such surplus is at least 10% of the amount of contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year.

7. Answering Paragraph VII of the petition, defendants deny the allegations contained therein, and allege that the correct definition of "contributions," as contained in §51-5-1 ACLA, 1949, is as follows:

> "As used in this Act, unless the context clearly requires otherwise—'contributions' mean the money payments to the Alaska unemployment compensation fund required by this Act."

8. Answering Paragraph VIII of the petition, defendants admit the allegations contained therein with the exception of the assertion that "defendants established a 'cut-off' date * * *;" and defendants allege, in this respect, that the "cut-off" date above referred to is established by law (§51-5-5(c) (1) (D) ACLA 1949) and is not established by defendants.

9. Answering Paragraph IX of the petition, defendants admit that as of the cut-off date, March 15, 1950, there was in the trust fund $9,397,006.93, but defendants deny each and every other allegation contained therein. Defendants allege that the total contributions paid by all employers during the calendar year 1949, amount to $2,386,932.63, and that as of the cut-off date, March 15, 1950, no "surplus," as that term is defined in the law, existed in the said Fund.

10. Answering Paragraph X of the petition, defendants deny the allegations contained therein.

11. Answering Paragraph XI of the petition, defendants admit the allegations contained therein.

12. Answering Paragraph XII of the petition, defendants admit the allegations contained therein.

13. Answering Paragraph XIII of the petition, defendants admit the allegations contained therein.

14. Answering Paragraph XIV of the petition, defendants admit the allegations contained therein.

15. Answering Paragraph XV of the petition, defendants admit the allegations contained therein.

16. Answering Paragraph XVI of the petition, defendants admit the allegations contained therein with the exception of those facts alleged in plaintiffs and petitioners' exhibits G and H, which plaintiffs and petitioners have re-alleged in their petition for review and which defendants have denied in this answer to said petition.

17. Answering Paragraph XVII of the petition, defendants admit the allegations contained therein.

18. Answering Paragragh XVIII of the petition, defendants admit the allegations contained therein.

19. Answering Paragraph XIX of the petition, defendants admit that in ascertaining the fact that no surplus existed in the Unemployment Compensation Trust Fund as of March 15, 1950, defendants included in the term "contributions" not only cash payments made for the calendar year 1949, but also experience rating credits which had been issued for said year; but defendants deny each and every other allegation contained in said Paragraph XIX.

Second Defense

For a second and separate defense, defendants allege (a) That the total "contributions" paid for the calendar year 1949, amounted to $2,386,932.63, and that this amount included not only cash but credits previously issued to qualified employers; and that based on this amount of contributions, no "surplus," as that term is defined in §51-5-5(c) (1) (G) ACLA 1949, existed in the Unemployment Compensation Trust Fund as of the cut-off date of March 15, 1950, and therefore no credits could be issued for the credit year beginning July 1, 1950.

(b) That the defendants' interpretation of "contributions" as including not only cash payments but also credits is reasonable and in conformity with the objective and purpose of the Alaska Employment Security Law.

(c) That the plaintiffs and petitioner's interpretation of "contributions" as including only cash payments, and not credits, would tend to defeat the purpose of the Alaska Employment Security Law and endanger the solvency of the Unemployment Compensation Fund, and is therefore incorrect.

Third Defense

For a third and separate defense, defendants allege that under the provisions of the Alaska Employment Security Law, experience rating credits for the credit year July 1, 1948, to June 30, 1949, were issued to plaintiff and petitioner, New England Fish Company, in the amount of $15,371.38; that this amount was based on defendants' interpretation of the word "contributions" as used in the definition of the word "surplus" (§51-5-5(c) (1) (G) ACLA 1949), as including not only cash payments but experience rating credits, and that if plaintiffs and petitioners' interpretation of "contributions" as including only cash payments had been followed by defendants, the amount of credits to be issued to plaintiff and petitioner, New England Fish Company, would have been $15,465.78. That for the credit year July 1, 1949, to June 30, 1950, experience rating credits were issued to plaintiff and petitioner, New England Fish Company, in

the amount of $17,645.82; that this amount was based upon defendants' interpretation of "contributions" as mentioned above, and that if plaintiffs and petitioners' interpretation had been followed, the amount of credits to be issued would have been $10,724.28.

That for the credit year July 1, 1948, to June 30, 1949, experience rating credits in the amount of $4,025.30, were issued to plaintiff and petitioner, Wards Cove Packing Company; that this amount of credits was based upon defendants' interpretation of "contributions" as mentioned above; that if plaintiffs and petitioners' interpretation of "contributions" had been followed, the amount of credits to be issued would have been $4,048.56. That for the credit year July 1, 1949, to June 30, 1950, plaintiff and petitioner, Wards Cove Packing Company, obtained credits in the amount of $15,670.81; that this amount was based upon defendants' interpretation of "contributions" as mentioned above; that if plaintiffs and petitioners' interpretation had been followed, credits in the amount of $6,445.07, would be all that would have been issued for that credit year.

That since plaintiffs and petitioners have in past years accepted credits issued according to defendants' interpretation of "contributions" as referred to above, they cannot now maintain that defendants' interpretation is erroneous.

Wherefore, defendants having fully answered the petition for review herein, pray that the orders and

decisions of the Employment Security Commission of Alaska, dated October 30, 1950, be affirmed and that plaintiffs and petitioners' petition be dismissed.

/s/ J. GERALD WILLIAMS,
Attorney General of Alaska,

/s/ JOHN H. DIMOND,
Assistant Attorney General,
Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed November 3, 1950.

[Title of District Court and Cause.]

Civil Cause No. 6377-A

STIPULATION

It is hereby stipulated and agreed between New England Fish Company, a corporation, and Wards Cove Packing Company, a corporation, the above-named plaintiffs and petitioners, through their attorney, H. L. Faulkner, and the above-named defendants, through their attorney, John H. Dimond, Assistant Attorney General of Alaska, that the above-named plaintiffs and petitioners' Exhibits A, B, C, D, E, F, G and H, attached to and made a part of plaintiffs and petitioners' Petition for Review of Decision of Employment Security Commission of Alaska on file herein constitute all documents and papers required by the provisions of §51-5-7(i)

ACLA 1949, to be certified and filed with the court by the defendants, and that said exhibits may be considered as having been so certified and filed; that plaintiffs and petitioners' Exhibits I and J attached to and made a part of their petition mentioned above constitute the defendants' findings of fact and decision in this case, and that the same may be considered as having been certified and filed with the court pursuant to the provisions of the statute hereinabove referred to.

Dated at Juneau, Alaska, this 3rd day of November, 1950.

/s/ H. L. FAULKNER,
FAULKNER, BANFIELD & BOOCHEVER,
Attorneys for Plaintiffs and Petitioners.

/s/ JOHN H. DIMOND,
Assistant Attorney General of Alaska, Attorney for Defendants.

[Endorsed]: Filed November 3, 1950.

In the District Court for the Territory of Alaska,
Division Number One at Juneau
No. 6377-A.

NEW ENGLAND FISH COMPANY, a Corporation, et al.,

Plaintiffs,

vs.

GEORGE VAARA, et al.,

Defendants.

No. 6356-A.

NEW ENGLAND FISH COMPANY, a Corporation, et al.,

Plaintiffs,

vs.

GEORGE VAARA, et al.,

Defendants.

ORDER OF CONSOLIDATION

It appearing to the Court that the issues of law involved in the two above-captioned cases, No. 6356-A and No. 6377-A, are the same, and that Cause No. 6377-A is set down for hearing on the 13th day of November, 1950, and that the facts to be developed in the evidence and the matters of law to be argued are the same,

Now, on motion of H. L. Faulkner, attorney for Plaintiffs, It Is Hereby Ordered that the two above-captioned causes, No. 6356-A and No. 6377-A, be consolidated for trial and argument.

Done in open Court this 13th day of November, 1950.

/s/ GEORGE W. FOLTA,
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed November 13, 1950.

[Title of District Court and Cause.]

Nos. 6377-A and 6356-A

OPINION

FAULKNER, BANFIELD & BOOCHEVER,
Attorneys for Plaintiffs and Petitioners.

J. GERALD WILLIAMS,
Attorney General of Alaska, and

JOHN H. DIMOND,
Assistant Attorney General,
For Defendants.

The Alaska Unemployment Compensation law, Section 51-5-1 to 20, A.C.L.A. 1949, requires employers to contribute to the unemployment compensation trust fund 2.7% of the payrolls for each quarter, less such experience rating credits as they may be entitled to while there exists in the trust fund a surplus, which, as defined by Section 51-5-5 (G), is the lesser of (1) that amount by which the moneys in the trust fund, as of the cut-off date, exceed four times the amount of contributions paid on

or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year; or, (sic) (2) an amount equal to 60% of the contributions so paid for the preceding calendar year. It is further provided that the surplus must amount is at least 10% of the amount of the contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year. In other words, the surplus which is distributable in credits is the excess over either (1) the product of four times the previous year's contributions or (2) 60% of the total contributions for the preceding year, whichever is the lesser, provided that such excess in either case equals at least 10% of such contributions.

Plaintiffs allege that on the cut-off date fixed by the defendants, March 15, 1950, there was $9,397,-006.93 in the trust fund and $1,370,519.14 in contributions, resulting in not only an excess of $3,914,930.30 over the product of four times the contributions, but also in an amount which greatly exceeded 60% of the contributions, the minima established by the act; that, although plaintiffs requested that the order fixing the cut-off date be vacated and the plaintiffs given the credits to which they would be entitled for the third and fourth quarters of 1950, the request was denied and plaintiffs were required to make full payment of 2.7% of their payrolls for the third quarter.

Plaintiffs further allege that in making the computation of the surplus in the trust fund, the de-

fendants erroneously added to the contributions paid the amount of credits and multiplied that sum, instead of the total of all contributions, by four, thereby rendering unavailable for distribution as credits the sum of $3,914,930.37 for the year commencing July 1, 1950; and plaintiffs pray that defendants be required to recompute the aforesaid surplus in accordance with the formula prescribed by Chapter 74 S.L.A., 1947, Section 51-5-5 (G) A.C.L.A. 1949, and distribute the surplus by way of credits.

It is clear, therefore, that the question which is decisive of this controversy is as to the meaning of the term "surplus" as used in the act, which in turn depends upon the meaning to be accorded the term "contributions paid." The plaintiffs contend that the surplus consists exclusively of cash contributions paid into the fund of all the employers for the preceding calendar year, whereas the defendants contend that both cash and credits constitute "contributions" in the determination of surplus. Since contributions for the period involved total $1,370,519.14 and credits $1,016,413.49, it is manifest that if the two are added to make $2,386,-932.63, under defendants' theory there would be no distributable surplus, whereas under the plaintiffs' theory $822,311.48 would be available for credits for the year beginning July 1, 1950, and the amount of contributions required to be paid correspondingly reduced. Section 51-5-1 provides that:

> "As used in this Act, unless the context clearly requires otherwise——

"(d) 'Contributions' means the money payments to the Alaska unemployment compensation fund required by this Act."

and Section 51-5-5 provides that:

"(G) 'Surplus' means the lesser of:

"(1) That amount by which the moneys in the Unemployment Compensation Trust Fund, as of the cut-off date, exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year, or

"(2) An amount equal to sixty per cent 60% of the contributions so paid for the preceding calendar year. No portion of the surplus shall be credited to any employer unless the amount of the surplus is at least ten per cent (10%) of the amount of the contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year," (emphasis supplied).

From the foregoing, it appears reasonably clear that the language employed leaves no room for construction because there is nothing to construe. But the defendants argue that in view of the declared objective of the act in the preamble to Chapter 4 E.S.L.A. 1937, to relieve economic insecurity due to unemployment by encouraging employers to provide more stable employment and by providing for a systematic accumulation of funds during good times for use in poor times and the fact that under plaintiffs' theory fluctuations in the surplus with

consequences never intended by the legislature, would result, the defendants' view should be adopted.

There is much plausibility and force to the argument that contributions should comprise both cash payments and credits if fluctuations in the fund are to be avoided and some degree of constancy attained, but in demonstrating, in such convincing fashion, the desirability of such a result and of measuring the benefit potential by the payroll totals, the defendants have also demonstrated that the legislature failed to use language expressive of the intent which defendants urge upon the Court, despite the fact that it would have been easy to provide that surplus should include credits given as well as contributions paid. Indeed, it is inconceivable that the legislature left the language stand in the belief that "contributions paid" and "money payments" included credits, for in no sense could it be said that such credits are "paid." This is not a case of an unhappy choice of words of doubtful or vague meaning or the use of terms of art, but rather a case in which the meaning of the language used is clear and certain. Such an omission can not be supplied by the Court under the guise of construction without encroaching upon the legislative function.

Nor does the clause "unless the context clearly require otherwise" in Section 51-5-1 warrant a different conclusion. Defendants' argument on this point apparently proceeds on the assumption that "context" is to be construed as coterminous with

the text of the act, but I am inclined to believe that it is the immediate rather than the remote company in which the words are found by which their meaning must be judged. There is nothing in the context of paragraph (d) of Section 51-5-1 defining "contributions" as money payments, or in paragraph (G) of Section 51-5-5, defining surplus as consisting of "contributions paid," which can be said to clearly require that the definition of these terms be enlarged to include credits.

The case, then as I see it, is one in which the Commission has attempted to supply an obvious omission by administrative construction in order to give the act the effect which it undoubtedly should have. Laudable as this may be, however, such power has not been lodged in the Commission or the Court. It is exclusively a legislative function on which no encroachment can be made by the judicial or executive branches.

In my opinion the doctrine of estoppel urged by the defendants is not applicable to a situation such as the one here dealt with.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed December 27, 1950.

[Title of District Court and Cause.]

Civil Causes No. 6356-A and No. 6377-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled Cause No. 6356-A and Cause No. 6377-A were consolidated for the purpose of hearing, by order of the Court entered on November 13, 1950, and they were heard together on that date, and evidence having been adduced on the part of the above-named defendants and argument of counsel having been made in open court on that date, and Faulkner, Banfield & Boochever, counsel for plaintiffs and petitioners, and J. Gerald Williams, Attorney General of Alaska, and John Dimond, Assistant Attorney General of Alaska, counsel for the defendants, thereafter having filed briefs on behalf of the respective parties and the court having taken the matter under advisement, and thereafter having on December 27, 1950, rendered its opinion,

Now Thereafter the court does make the following:

Findings of Fact

I.

That the plaintiff and petitioner New England Fish Company is a corporation organized under the laws of the State of Maine, and plaintiff and petitioner Wards Cove Packing Company is a corporation organized and existing under the laws of Alaska, and that both corporations are and were at

all times mentioned herein qualified to do business in the Territory of Alaska, and they were and are now employers of labor and contributors to the Alaska Unemployment Compensation Fund hereinafter mentioned.

II.

That the plaintiff and petitioner New England Fish Company and the plaintiff and petitioner Wards Cove Packing Company are now and have been for many years engaged in the business of catching, purchasing, canning, freezing and shipping fish products in Alaska, and the annual payroll of the New England Fish Company is in excess of $735,000.00 and the annual payroll of the Wards Cove Packing Company is in excess of $190,000.00, and both corporations are now and have been at all times mentioned in the pleadings subject to all the provisions of the laws of the Territory of Alaska, including the law known and designated as the Alaska Unemployment Compensation law.

III.

That defendants George Vaara, Anthony Zorich and Ralph J. Rivers constitute the Employment Security Commission of Alaska under the provisions of Chapter 4, Session Laws of the Extraordinary Session of the Alaska Legislature of 1937, as amended (Sections 51-5-1 to 51-5-20 inclusive, ACLA 1949) and the defendant R. E. Sheldon is the Director and chief executive of the Employment Security Commission of Alaska, and he was such at all times mentioned herein, and the defendants are charged with the duty of administering the Alaska Unemployment Compensation law as found

in Chapter 4, Session Laws of the Extraordinary Session of the Alaska Legislature of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939, and Chapter 40 of the Laws of Alaska of 1941, Chapters 8, 20 and 50 of the Laws of Alaska of 1945, Chapter 32 of the Laws of Alaska of 1946, Chapter 74 of the Laws of Alaska of 1947, and Chapter 112, Laws of Alaska of 1949, and all other amendments thereof, which laws are found in Sections 51-5-1 to 51-5-20 inclusive, ACLA 1949, and that the defendants have been duly appointed and qualified.

IV.

That Section 51-5-5 ACLA, 1949, as amended by Chapter 112, Session Laws of 1949, requires plaintiffs, and all other employers in Alaska, to pay into the Alaska Unemployment Compensation fund 2.7 per cent of their payrolls for each quarter year, and Chapter 74, Session Laws of Alaska 1947 (Section 51-5-5 ACLA 1949) sets up certain credits against these payments according to a formula therein contained, and it requires the defendants to compute the credits and notify the employers, including the plaintiffs, of the amount of the credits, and to give all employers subject to the provisions of the law, including plaintiffs, the benefit of the credit due, thereby reducing the amount of cash or money contribution required to be paid, until the total amount in the Unemployment Compensation Trust Fund falls below four times the amount of contributions paid on or before the "cut-off" date, hereinafter

mentioned, for the preceding calendar year, or below 60% of the contributions so paid for such calendar year.

V.

That "contribution" is defined in the law as "money payments to the Alaska Unemployment Compensation Fund required by this Act" unless the context of the act "clearly requires otherwise" (Section 51-5-1 ACLA 1949).

VI.

That the defendants established a "cut-off" date as it is defined in the law, as of March 15, 1950, and notified all employers, including plaintiffs, that no more credits would be granted after July 1, 1950, and that none could be used after that date under the provisions of Chapter 74, Session Laws of Alaska, 1947 (Section 51-5-5 ACLA 1949), and the Commission issued a bulletin and order to that effect on April 28, 1950.

VII.

That at the "cut-off" date as established by defendants on March 15, 1950, there was in the Trust Fund the sum of $9,397,006.93, and the total contributions of all employers during the preceding year amounted to $1,370,519.14, so that at the "cut-off" date aforesaid the amount of surplus in the fund exceeded four times the contributions by $3,914,930.37, and it greatly exceeded 60% of those contributions.

VIII.

That in computing the surplus required for the credit year beginning July 1, 1950, the defendants multiplied the contributions paid during the calendar year 1949 plus the credits given during that year to all employers by the figure 4. The total contributions paid by all employers during the year 1949 was $1,370,519.14 and the total amount of credits given that year amounted to $1,016,413.49. Four times these two amounts is $9,547,730.52, and defendants used this figure in determining whether credits should be given to employers for the credit year beginning July 1, 1950, and since the amount in the Trust Fund as of March 15, 1950, the "cut-off" date, was $9,397,006.93, the defendants cut off all credits to employers, including the plaintiffs and petitioners, for the credit year beginning July 1, 1950. That the law above mentioned defines "contributions" as "money payments," unless otherwise clearly required by the context, and the required surplus for the establishment of credit is four times the contributions paid during the preceding calendar year, with a provision that no credits may be granted in excess of 60% of the contributions paid during the preceding calendar year.

IX.

That had the defendants computed the required surplus in order to assign credits as four times the contributions paid in 1949, there would have been in the fund as of the "cut-off" date a surplus of $3,914,930.36 applicable to future credits.

X.

That the Complaint in Cause No. 6356-A above mentioned was filed herein on October 9, 1950, and in that cause plaintiffs seek a mandatory injunction against defendants to require them to recompute the surplus and assign credits to plaintiffs and all others similarly situated in accordance with the provisions of the statute and to permit them to reduce the amount of cash contributions otherwise payable for the quarters ending September 30 and December 31, 1950, and March 31 and June 30, 1951, but before a hearing could be had in that cause contributions became due and payable to the defendants for the quarter ended September 30, 1950, and the plaintiffs and all others similarly situated, and all other employers in the Territory, were required for the September quarter, 1950, to pay 2.7% of their payrolls to the defendants to be covered into the Alaska Unemployment Compensation Fund, without any reduction for credits. Thereupon plaintiffs and others similarly situated paid the amounts demanded under protest and the plaintiff New England Fish Company paid 2.7% of its payroll for the September, 1950, quarter, and this amounted to $14,092.10, and $4,225.79 for the Wards Cove Packing Company.

XI.

That these payments hereinabove mentioned for the September, 1950, quarter were made within the time required by law and they were made under protest to the Commission with a petition for a refund in cash to the extent of the credits which

plaintiffs claimed should have been assigned to them, and thereupon plaintiffs, in endeavoring to have the credits assigned and to have a refund made to them to the extent of the credits for the September quarter of 1950, followed the administrative procedure provided by the Act and exhausted all their administrative remedies as set up in the petition in Cause No. 6377-A, and defendants declined and refused to make a recomputation of the surplus in the Unemployment Compensation Trust Fund, and declined and refused to assign plaintiffs and credits for the quarter ended September 30, 1950, and thereupon plaintiffs filed the petition herein in the above-entitled cause No. 6377-A, and that all and singular the allegations of that petition are true.

XII.

That there was in the Alaska Unemployment Compensation Trust Fund at the "cut-off" date on March 15, 1950, the sum of $822,311.48 available for credits for the credit year beginning July 1, 1950.

XIII.

That plaintiffs brought these actions on behalf of themselves and all other employers similarly situated in the Territory of Alaska.

Based on the foregoing Findings of Fact, the Court does make the following:

CONCLUSIONS OF LAW

I.

That the computation of surplus in the Alaska Unemployment Compensation Trust Fund as made by the defendants was erroneous in that it included not only four times the contributions paid for 1949, but four times the credits assigned to plaintiffs and other employers for the calendar year.

II.

That in computing the surplus for the purpose of determining and assigning credits, the defendants should use only four times the contributions paid for the calendar year 1949 in determining the surplus and in determining the amount available for credits, which the law provides shall be for any credit year not more than 60% of the total contributions paid during the preceding calendar year, and defendants are required to compute the surplus and assign the credits on that basis.

III.

That the amounts paid by the plaintiffs New England Fish Company and Wards Cove Packing Company for the September quarter, 1950, are in excess of the amount required and should be reduced by the amount of the credits which should have been computed and assigned to the plaintiffs, and the excess amount paid for the September quarter of 1950 by the plaintiffs should be refunded to them, and defendants shall recompute the sur-

plus in the Alaska Unemployment Compensation Trust Fund as of the "cut-off" date of March 15, 1950, and in accordance with the Findings hereinabove made and in accordance with the law, and assign to the plaintiffs and all others similarly situated such credits as are due them under the formula prescribed in the law referred to hereinbefore and in accordance with their respective credit rating classifications.

It Is Ordered that judgment be entered accordingly and that the defendants be ordered to make the recomputation and the assignments of credits in accordance with the Findings and Conclusions herein made, for the credit year beginning July 1, 1950, and that they refund to the plaintiffs and all others similarly situated the amounts heretofore paid to the defendants by the plaintiffs and others similarly situated for the quarter ended September 30, 1950, to the extent of the credits which should have been allowed for the credit year beginning July 1, 1950, and that the defendants in a similar manner compute and assign credits for the three remaining quarters of the credit year beginning July 1, 1950.

Done in open court this 18th day of January, 1951.

/s/ GEORGE W. FOLTA,
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed January 18, 1951.

In the District Court for the District of Alaska,
Division Number One at Juneau

Civil Causes No. 6356-A and No. 6377-A

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Defendants.

JUDGMENT AND DECREE

This cause having come on regularly for trial before the Court on November 13, 1950, upon the complaint and petition of plaintiffs and petitioners in Causes No. 6356-A and No. 6377-A and the answers of the defendants to the complaint in No. 6356-A and the complaint and petition in No. 6377-A, and the two causes having been consolidated for hearing and trial by the order of the Court entered herein on November 13, 1950, and plaintiffs and petitioners being represented by Faulkner, Banfield & Boochever, of Juneau, Alaska, their attorneys, and the defendants being represented by their attorneys, J. Gerald Williams, Attorney General of Alaska, and John Dimond, Assistant At-

torney General of Alaska, and evidence having been adduced before the Court on behalf of the parties, and arguments having been made by respective counsel for plaintiffs, petitioners and defendants, and the cause having been submitted for judgment on that day, and the Court having taken the matter under advisement and having thereafter, on December 27, 1950, rendered its written opinion which was on that day filed with the Clerk of the Court, and the Court having made and filed herein on January 18, 1951, its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that the defendants above named, and their officers, agents, employees and successors, and each of them, be and they are hereby enjoined from collecting from the plaintiffs and from all others similarly situated who are subject to the Alaska Unemployment Compensation law contributions required to be paid under that law, as referred to in the pleadings and findings herein, for the credit year beginning July 1, 1950, and ending June 30, 1951, in excess of 2.7 per cent of their payrolls less the credits provided to be allowed employers under the provisions of Chapter 74 of the Session Laws of Alaska, 1947, as amended (Section 51-5-5, ACLA, 1949), which credits are to be computed according to the formula prescribed in the law, and by computing the surplus available for credits as four times the amount of contributions paid during the calendar year 1949, which contributions amounted to $1,370,519.14, and that the defendants, their agents, officers, employees and successors, and each

of them, forthwith assign the plaintiffs and all other employers in Alaska credits against the payments required to be made into the fund for the credit year aforesaid equal to sixty per cent of $1,370,519.14, or a total of $822,311.48; and

It Is Further Ordered and Decreed that, after the recomputation of the credits due in accordance with the Court's opinion and findings herein, the defendants, their agents, officers, employees and successors, and each of them, forthwith refund to the plaintiffs and to all others similarly situated all payments heretofore made and hereafter made during the credit year beginning July 1, 1950, and ending June 30, 1951, in excess of the cash contributions which would have been required and which are required by the computation of the surplus and the portion thereof available for credits, namely, $822,311.48, for the credit year aforesaid, and that after recomputation and assignments of credits for the credit year aforesaid shall have been made, the defendants, their agents, officers, employees and successors, and each of them, assign to the plaintiffs and to all others similarly situated the portions of the surplus available for credits, namely, $822,311.48, in accordance with their respective classifications under the law and according to the opinion and findings of this Court.

Done in open court this 18th day of January, 1951.

/s/ GEORGE W. FOLTA,
Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed January 18, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above-named defendants hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment and decree entered in this action on January 18, 1951.

J. GERALD WILLIAMS,
Attorney General of Alaska.

/s/ JOHN H. DIMOND,
Assistant Attorney General, Juneau, Alaska, Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 14, 1951.

[Title of District Court and Cause.]

No. 6377-A

STATEMENT OF POINTS TO BE RELIED ON BY APPELLANTS

The appellants, defendants above named, propose on their appeal to the United States Court of Appeals for the Ninth Circuit, to rely upon the following points as error:

I.

The court erred in holding that the computation made by appellants, from which it was determined that no surplus, distributable for experience rating credits, existed in the Alaska Unemployment Compensation Trust Fund as of March 15, 1950, was

erroneous in that such computation was made on the basis of "contributions," meaning not merely cash payments but the sum of such cash payments and experience rating credits.

II.

The court erred in finding that for the calendar year 1949 total contributions from all employers in the Territory amounted to $1,370,519.14, that on March 15, 1949, there existed in the Alaska Unemployment Compensation Trust Fund a surplus which exceeded four times such contributions by $3,914,930.37, and that on said date there was in the Fund $822,311.48 available for distribution as experience rating credits for the credit year July 1, 1950-June 30, 1951.

This was error since the total contributions paid for 1949 amounted, not to $1,370,519.14, which is merely the amount of cash payments made for that year, but to $2,386,932.63, which is the sum of cash payments and experience rating credits for such year. The total amount of money in the Fund, i.e., $9,397,006.93, thus did not exceed four times the total contributions for 1949, and consequently no surplus existed in the Fund to be distributed as experience rating credits for the year July 1, 1950-June 30, 1951.

III.

The court erred in holding that the appellees were not estopped from questioning appellants' determination of the meaning of "contributions" as that word is used in the definition of "surplus" in the

Alaska Employment Security Law, Section 51-5-5 (c)(1)(G), Alaska Compiled Laws Annotated, 1949.

This was error because appellees in previous years had accepted appellants' construction of the law in such respect, and by reason of such acquiescence received, for the credit year July 1, 1949-June 30, 1950, a greater amount of experience rating credits than they would have received had their interpretation of "contributions," as meaning only cash payments, been adopted and followed by appellants.

IV.

The court erred in entering judgment and decree in favor of appellees, and in ordering appellants to recompute the surplus in the Alaska Unemployment Compensation Trust Fund as of March 15, 1950, to assign experience rating credits to appellees and all others similarly situated for the credit year July 1, 1950-June 30, 1951, and to make refunds to appellees and all others similarly situated of cash contributions made by them for the said credit year in excess of the cash contributions which would be required after experience rating credits in the amount of $822,311.48 have been issued.

Dated at Juneau, Alaska, this 15th day of February, 1951.

J. GERALD WILLIAMS,
Attorney General of Alaska.

/s/ JOHN H. DIMOND,
Assistant Attorney General, Attorneys for Defendants-Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 16, 1951.

[Title of District Court and Cause.]

No. 6377-A

STIPULATION RE PRINTING OF RECORD

It is hereby stipulated and agreed by and between Faulkner, Banfield and Boochever, attorneys for plaintiffs above named, and John H. Dimond, Assistant Attorney General of Alaska, one of the attorneys for the above-named defendants, that in printing the papers and records to be used in the hearing on appeal in the above-entitled cause before the United States Court of Appeals for the Ninth Circuit, the title of the court and cause in full shall be omitted from all papers except on the first page of the record, and that there shall be inserted in place of the title on all papers used as part of the record the words "Title of District Court and Cause"; also that all endorsements on all papers used as a part of the record may be omitted except the clerk's filing marks and admissions of service.

Dated at Juneau, Alaska, this 15th day of February, 1951.

FAULKNER, BANFIELD & BOOCHEVER,

By /s/ H. L. FAULKNER,
Attorneys for Plaintiffs.

/s/ JOHN H. DIMOND,
Assistant Attorney General, Attorney for Defendants.

[Endorsed]: Filed February 16, 1951.

[Title of District Court and Cause.]

No. 6377-A

DESIGNATION OF PORTIONS OF RECORD AND PROCEEDINGS TO BE INCLUDED IN RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

You are hereby requested to make a transcript of record to be filed in the United States Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above-entitled cause, and to include in such transcript of record the following papers and records which the above-named defendants-appellants designate as those portions of the record and proceedings herein which they deem should be contained in the record on appeal of this cause:

1. Petition for review of decision of Employment Security Commission of Alaska.

2. Plaintiffs' Exhibits Nos. A, B, C, D, E, F, G, H, I, and J attached to Petition.

3. Answer to petition.

4. Stipulation dated October 31, 1950.

5. Stipulation dated November 3, 1950.

6. Reporter's transcript of record.

7. Plaintiffs' Exhibit No. 1.

8. That portion of defendants' Exhibit A, the New York State Unemployment Insurance Law, designated therein as "Section 577(d)."

9. Defendants' Exhibit B.

10. Defendants' Exhibit C.

11. Opinion.

12. Findings of fact and conclusions of law.

13. Judgment and decree.

14. Notice of appeal.

15. Statement of points relied on by appellant.

16. Stipulation re printing of record.

17. This designation of portions of record and proceedings to be included in the record on appeal.

Dated at Juneau, Alaska, this 15th day of February, 1951.

J. GERALD WILLIAMS,
Attorney General of Alaska.

/s/ JOHN H. DIMOND,
Assistant Attorney General, Attorneys for Defendants-Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 16, 1951.

[Title of District Court and Cause.]

No. 6356-A and No. 6377-A

COUNTER PRAECIPE AND DESIGNATION OF PORTIONS OF RECORD AND PROCEEDINGS REQUESTED BY PLAINTIFFS AND APPELLEES TO BE INCLUDED IN RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

In the preparation of the transcript of record to be filed in the United States Court of Appeals for the Ninth Circuit pursuant to an appeal being taken by the above-named defendants, you are requested to include in the transcript of record, in addition to the papers and records requested by the defendants-appellants, the following:

1. Complaint in Cause No. 6356-A.

2. Answer to Complaint in Cause No. 6356-A.

3. Order dated November 13, 1950, consolidating Causes Nos. 6356-A and 6377-A.

4. This Praecipe and Designation of Portions of Record and Proceedings Requested by Plaintiffs-Appellees.

Dated at Juneau, Alaska, this 16th day of February, 1951.

/s/ H. L. FAULKNER,
Attorney for Plaintiffs-Appellees.

Receipt of copy acknowledged.

[Endorsed]: Filed February 16, 1951.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau
No. 6356-A and No. 6377-A

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Plaintiffs,

vs.

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Defendants.

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 13th day of November, 1950, at 9:30 o'clock a.m., at Juneau, Alaska, the above-entitled cause came on for hearing, the Honorable George W. Folta, United States District Judge, presiding; the plaintiffs appearing by H. L. Faulkner, of their attorneys; the defendants appearing by John H. Dimond, Assistant Attorney General of the Territory of Alaska;

Whereupon, the following occurred:

The Court: I have familiarized myself with the pleadings and the issues so, unless counsel have something further to add to what the pleadings reflect, we can go on.

Mr. Faulkner: I think, your Honor, the plead-

ings [1*] look more formidable than the issues of the case. I might say that this involves the interpretation of one or two words in the statute, what constitutes surplus. We have here a number of original letters and petitions and so on, but these are all attached to the complaint and admitted, so I don't think it is necessary to admit them in evidence. We have no evidence, and that is all as far as I am concerned. So, if Mr. Dimond has any evidence——

Mr. Dimond: I have a couple of witnesses.

The Court: You may call them then.

JOHN T. McLAUGHLIN

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dimond:

Q. Please state your name.

A. John T. McLaughlin.

Q. What is your occupation?

A. Director of the Unemployment Insurance Division of the Employment Security Commission.

Q. How long have you been in that position?

A. Since March, 1947.

Q. Did you work on the drafting of the experience rating, 1947 amendment to the Employment Security Law? A. Yes, I did. [2]

Q. What part did you have with respect to the drafting of that statute?

A. I was directed by Mr. Sheldon, the Executive

*Page numbering appearing at foot of page of original Certified Transcript of Record.

(Testimony of John T. McLaughlin.)

Director, to continue on with our study of experience rating and complete the study with the thought of having a bill ready for presentation in the 1947 Legislature.

Q. Was this experience rating law originated in your office or was it modeled after some other state enactment along the same lines?

A. In seeking an employer rating system that would work favorably in the Territory of Alaska, we ran onto the payroll decline system used in New York.

Q. You have answered the question?

A. Yes. That we followed the study made in New York State on payroll decline.

Q. Did you consider the New York definition of surplus as respects the trust fund, adequacy of the fund?

A. We considered the New York plan on reserve and surplus. The preliminary study in New York State, the whole study was based on how much money is necessary for sufficient reserve based on the preceding year's taxable wages in as much as the taxable wages represent the benefit potential, and it was declared that 10%, or rather 10.8% of the preceding year's taxable wages was sufficient. The preliminary study carried this figure, 10.8 of the preceding year's [3] taxable wages. Later, when the law was drafted, that swung from the usage of 10.8 of the preceding year's taxable wages to four times the contribution amount, which in effect is

(Testimony of John T. McLaughlin.)

the same as 2.8, the contribution being 2.7 of the taxable wages.

The Court: Am I to understand that whatever formula they used to start with ended and they used this other?

A. No, your Honor. The system has not been changed since it was first passed by the Territorial Legislature.

The Court: I am speaking of the New York system. I thought that is what you were talking about in your last answer.

A. We used that system, but, since the question is on surplus and on reserve, I wanted to bring out that point.

The Court: When you say they later did so and so, do you mean the Legislature or New York?

A. It was New York; yes.

Mr. Dimond: At this time, if the Court please, I would like to offer in evidence the New York State law; I have marked the place where surplus is defined in the section of the statute.

The Court: Am I to understand that your testimony will show that it was adopted here?

Mr. Dimond: No.

Mr. Faulkner: If the Court please, we don't want to [4] object, but for the purpose of shortening the record I don't think the testimony is relevant at all—what it is in New York.

The Court: If it was not adopted here, how is it relevant?

(Testimony of John T. McLaughlin.)

Mr. Faulkner: I think we are concerned only with the language of our own statute.

Mr. Dimond: My only thought is, your Honor, if the Alaska law was taken—of course I can't prove it was adopted word for word, but through testimony that the New York law was considered, and they drafted—and the reasonable inference on the interpretation of surplus, it is almost identical with the Alaska law and was adopted by the Legislature.

The Court: That sounds reasonable enough except that, as I understand the testimony, it hasn't been shown yet that that was adopted here.

Mr. Dimond: I don't think it was adopted.

Q. Was the New York law adopted?

A. Not in its entirety.

The Court: Was the part adopted that is involved in this controversy?

A. To a great extent it was. The payroll decline, reserve and surplus was adopted, your Honor.

Mr. Faulkner: I still think it is not competent because theories are not admissible to show what the law is. I mean the law is plain on its face. I think that is all we are [5] concerned with.

The Court: You mean this formula, if it can be called a formula, was based, or you took into consideration this payroll decline theory?

A. Yes, your Honor.

The Court: What is this payroll decline theory?

A. Employers are classified according to their annual decline in payrolls.

(Testimony of John T. McLaughlin.)

The Court: Is there necessarily a decline in payrolls?

A. No. Some cases increase, or the payroll is constant. However, if the payroll declines during a three-year period, it has the effect of placing the employer in a less favorable class than those who have a steady payroll or show an increase.

The Court: Well, then am I to understand that, so far as our statute is concerned, it is based on this theory of payroll decline, only without taking into account the payrolls of employers who increase or remain more or less stationary? How can this theory play an important part if it is only applied to employers whose payrolls decline? Are the employers involved in this controversy employers whose payrolls have declined?

Mr. Dimond: Well, your Honor, I think the experience rating theory is that those employers who have shown declines— [6] I mean, those who have not shown any declines get more credits than those who have shown more declines. I think they consider all employers and break it into percentage of declines. Those who show increases and no declines at all are in the top-favored class and get more surplus than those who don't for the same period of time.

The Court: Why is it necessary here at this time to emphasize payroll decline?

Mr. Dimond: There is no particular point in emphasizing that. As a matter of fact, it isn't essential I show the New York statute.

(Testimony of John T. McLaughlin.)

The Court: You can show something apparently irrelevant for the purpose of affording the Court an understanding. I am posing the questions at the outset, because it would seem to be somewhat irrelevant. Don't let me interfere with the manner you have of presenting your case, however.

Q. Mr. McLaughlin, at what time was the administrative interpretation of contributions, as contained in and used in this case, arrived at; that is, when did the administrator of your office determine the definition of surplus to mean total contributions; that is, cash plus credits?

A. The determination was made at the offset in figuring reserve, that it was the legislative intent to take four times the preceding year's contributions.

Q. Did you always interpret contributions as cash plus [7] credits? A. Yes, sir.

Q. There has never been any other interpretation made by your office? A. No.

The Court: When you say "cash plus credits," would that be the same as contributions plus credits?

Mr. Dimond: Not according to our theory.

The Court: What is the difference?

Mr. Dimond: Plaintiffs maintain contributions are only one thing; that is, cash. And defendants maintain that, since before you can have surplus, you must have four times the previous year's contributions. Then, if it meant cash plus credits—there are so many credits, if I may explain to the Court—then when they are obliged to make con-

(Testimony of John T. McLaughlin.)

tributions they may take credit instead of cash if they wish.

The Court: As you use contributions, is it looked upon as credit?

Mr. Dimond: Yes. The issue in this case is that the Employment Security Commission has considered credit as contribution and used them in figuring the surplus.

Q. Was there ever any discussion or argument within the Commission as to whether the plaintiff's or defendants' system should be used?

A. Yes. There was a lengthy discussion on the subject, and [8] several schedules were run, or studies were run, using cash only as contributions, using credit and cash as contributions, and the third study was a study using credit and cash with the subtraction of outstanding credit from the monies in the fund. Those three different systems were run as a study.

Q. And the final one determined, or was contributions interpreted to mean cash plus credits or total credits? A. Yes.

Q. And that has been adhered to from the first working of the statute? A. Yes.

Mr. Dimond: No further questions.

Cross-Examination

By Mr. Faulkner:

Q. John, the point in this case is the Commission has used cash and credits in computing the surplus required. A. Yes, sir.

(Testimony of John T. McLaughlin.)

Q. And we contend under the statute the money payments only should be used. Now, you say that you have in the past used the money payments plus the credits in computing the surplus. Now, you made a study of the results of that?

A. Yes, sir.

Q. As compared with using money payments only. Now, in the [9] answer here there are two examples set up for two years. Now, in those two years involved you show that by using the money payments, computing the surplus, multiplying by four, that one of the parties here would have been required to pay more money during one year by two hundred dollars on a payroll of seven hundred and some thousand, and the other would have been required to pay less. Is that so?

A. I believe that is so, Mr. Faulkner. However, Mr. Prather ran that study and, if it is your pleasure, I would rather have you question him.

Q. Yes. He will be on the stand later on?

A. Yes, sir.

Mr. Faulkner: That is all.

Mr. Dimond: That is all.

The Court: Well, now, what isn't clear to me is whether this decision of the Commission is something that is original or is it what has been done elsewhere under similar statutes.

Mr. Faulkner: There aren't any similar statutes, except the closest is Washington, but there are no court cases. I don't think the matter has ever been——

(Testimony of John T. McLaughlin.)

The Court: I thought it was patterned after the New York law.

Mr. Faulkner: I don't think so. [10]

Mr. Dimond: What I am attempting to show, your Honor, is that it is similar to the New York law so far as insurance, and they have a definition of surplus which is defined as a certain amount, if I may read it—" 'Surplus' means that amount by which the moneys in the fund as of the effective date, after subtracting the amount of credits," which we don't, "previously established under this section and outstanding as valid on such date, exceed the lesser of nine hundred million dollars or three and one-half times the amount of contributions payable on the payrolls reported by all employers." Our statute says that surplus is the amount by which the fund exceeds four times the amount of contributions payable.

Mr. Faulkner: "Paid." New York says, "payable"; ours is "paid."

Mr. Dimond: I have the report of the New York State Joint Committee in which the New York bills were considered, and this Committee stated that one of the most important things to be considered in their experience rating legislation was the solvency of the fund. If I might read it to the Court, the Committee said, "the solvency of the Fund must not be jeopardized. In this connection, the less advantageous economic conditions affecting employment in the postwar period should be taken into account in determining estimates of the Fund's

(Testimony of John T. McLaughlin.)

future solvency. The provisions of several bills [11] introduced in this year's Legislature meet this test by requiring a constant reserve of 10.8 per cent of the previous year's total taxable payroll (equivalent to four times the previous year's total contributions to the Fund)." If the reserve required is four times 2.7 per cent of the total payroll for the previous year, it is the same as cash plus credits because that will amount to total payroll. What we are trying to bring out in this case is that the Alaska interpretation must be the same as this.

Mr. Faulkner: Your Honor, I think that is an entirely different statute, and we don't have that in our statute. Now, we have the safeguard on the fund, that the fund, the surplus in the fund available for credit must be four times something. It is four times the contributions paid during the preceding year. Our point is we use this language, "contributions paid," and then go back in the original law and contributions is defined as money payments required by the act unless otherwise clearly required, as it doesn't in this case. I would like to ask Mr. McLaughlin another question or two. It might aid the Court.

Q. Mr. McLaughlin, the way this thing works, I think the Court understands it, but the law requires certain contributions which amount to a per cent of every employer's payroll. That is the fundamental thing; isn't it?

A. Fundamental; yes. [12]

Q. In 1947—that was originally 2.7?

(Testimony of John T. McLaughlin.)

A. Yes.

Q. In 1947 the Legislature passed an experience rating law. By that time you had considerable money in the fund?

A. Yes. It was considered we had sufficient money in the fund to distribute experience rating credits.

Q. We had some discussion about experience rating credits. After the law in 1947 was passed that provided instead of paying 2.7 into the fund there was certain credits given employers based on their payroll experience; is that right?

A. That is right.

Q. Now, those credits were based on the payroll decline; that is, you used that as a basis; that is, in other words, if a man's payroll declined a great deal from one year to another, he wouldn't get so much credit as if it were constant or increasing?

A. That is right.

Q. Payroll isn't exactly the same from one year to another in dollars and cents. There might be a little variation from one year to another, so you have six classes? A. Yes.

Q. The highest is where the payroll doesn't decline more than ten per cent, and the next is thirty per cent and so on? A. Yes. [13]

Q. That is the theory on which credits are based; that is the payroll decline?

A. The theory under which credits are distributed.

Q. Various other things enter into the formula

(Testimony of John T. McLaughlin.)

for computing the credits; you have a number of things you take into consideration in computing credits?

A. Yes; a regular schedule which results in the final computation of credits or percentage of credit for each of the different classes.

Q. Now, John, that is rather technical; I mean those various elements of the formula for computing an employer's credit, there are several elements that would have to be figured by one familiar with that particular thing?

A. Actually the schedule is not too complicated. We have six classes. The top class has the best experience. They have maintained their payroll. The theory of this experience rating is an attempt to, besides issuing credit, to stimulate the employer, to have constant employment in the Territory. Those in the top class deserve more credit, so they are given a certain weight which is above the weight in the lower class.

Q. In computing those credits you have to take into consideration various factors, one of which is payroll decline, if any, and the other is total payroll of all employers? A. Yes. [14]

Q. And so when those various credits are computed they are computed by the Commission without any notice or participation by the employers?

A. Yes, sir.

Q. And the New England Fish Company and the Wards Cove Packing Company, the two petitioners in this case, have been in the top class, have they; or do you know? A. I don't know.

(Testimony of John T. McLaughlin.)

Q. You don't know.

Mr. Faulkner: Off hand I think that is all.

The Court: Are the factors of the formula so ascertainable or determinable that any two people could come up with the same result so far as computation is concerned?

A. Yes, sir. If the formula is followed according to the law, any number of people would come up with the same result.

The Court: That is all.

Mr. Dimond: Has the Court ruled on my offer to admit the New York statute in evidence?

The Court: What do you claim for it?

Mr. Dimond: Well, I think the testimony shows that the New York statute was studied in connection with the drafting of the Alaska law, and at least some of the Alaska law is very similar, and the thinking of the New York committee on the intent of its law should have the inference as to showing [15] that the people who drafted the Alaska law were thinking along the same line, the fact that contributions have reference to the total, and I believe that is shown in the Joint Committee Report in 1945, and also the definition of surplus in the New York Statute itself.

The Court: Well, how would that thinking be affected by the difference, to which counsel called attention, between the two statutes?

Mr. Dimond: The essential things we are concerned with here today are not different. You might have some different wording in the statute, but the

essential things are the same. That is whether or not a surplus can be distributed, which means whether or not you have a certain required reserve in your fund depends upon the previous year's contributions. Now, New York, according to these that I want to introduce, shows whether or not you have a reserve large enough to distribute credits depends on the previous year's contributions, total payrolls, not cash payments alone. There is no essential difference. The New York statute does not define contributions as being money payments like Alaska law.

The Court: Is it a distinction without a difference, or is it a real difference that would call perhaps for a different interpretation?

Mr. Dimond: Plaintiffs say it is a difference. We think it is not. In the original law, unless the context is [16] otherwise, money payments were not issued for ten years. When the experience rating law was drafted that was left in. It wasn't changed as it possibly should have been. It was left in, and we submit and are trying to show on argument that the new experience rating law clearly means something else than cash if you interpret money as cash; credits. We have to rely on the fact that money does not always have definite significance. In view of the statute, the context of the law and legislative history, as I have attempted to show, in considering the New York law, that contributions mean something besides cash payments, it means total credits. In fact reserve relates to payments. You won't have that relating to payrolls if you just use cash contributions.

The Court: This is something perhaps besides the point involved. What would be the difference? Would it be substantial or just minor if one or the other theory prevailed here, or if the plaintiffs' theory——

Mr. Dimond: I am attempting to show, by an exhibit which will be identified by the next witness——

The Court: Then you needn't go into it. If any booklets or any of them tend to throw light that will be——

Mr. Faulkner: For the sake of the record I would like to renew my objection to these, but principally on the ground that it is more or less confusing; it confuses the issue. I have no objection to the introduction so the Court [17] can read it, but I think it confuses the issue here, and for that reason I object to it. I will afterwards point out to the Court the difference. We are concerned with the Alaska law. Even if the New York law was the same, it would not be binding on the Court. There are no court decisions of this anywhere.

Mr. Dimond: There aren't; I will admit that, your Honor.

The Court: If this were a jury trial with the possibility of confusing the jury, it would be formidable and I would give weight to it as having a tendency to confuse the jury, but, not having a jury, the objection will be overruled, and it may be admitted. Do you wish to have them lettered separately?

Mr. Dimond: I might say I only wish a certain portion.

The Court: You might specify it.

Mr. Faulkner: I would like the whole law if it is going in.

The Court: All the law?

Mr. Dimond: I offer this pamphlet, New York State Unemployment Insurance Law, Article 18 of the New York State Labor Law, as Amended, as Defendants' Exhibit 1.

The Court: Defendants' Exhibit A.

DEFENDANTS' EXHIBIT "A"

The same being a portion of Chapter 577 of the New York State Unemployment Insurance Law

(Article 18 of the New York State Labor Law, as Amended.)

577. Contribution Rate Credits. Sub-section (d). "Surplus" means that amount by which the moneys in the fund as of the effective date, after subtracting the amount of credits previously established under this section and outstanding as valid on such date, exceed the lesser of nine hundred million dollars or three and one-half times the amount of contributions payable on the payrolls reported by all employers on or before the effective date for the preceding completed calendar year, limited, however to an amount not greater than sixty per centum of such contributions for such year. * * *

Mr. Dimond: And the Report of the New York State Joint Legislative Committee. Mr. Faulkner, I believe there is [18] only one——

Mr. Faulkner: I haven't seen that, so I don't know what is in it.

Mr. Dimond: Page 53, the part marked in red ink.

The Court: That is the second pamphlet?

Mr. Dimond: That is the second pamphlet.

The Court: The second pamphlet may be admitted and marked Defendants' Exhibit B.

DEFENDANTS' EXHIBIT "B"

The same being a portion of page 53 of "Report of the New York State Joint Legislative Committee on Industrial and Labor Conditions. (Legislative Document 1945) No. 39.

IV. Unemployment and Health Insurance. Subparagraph 2. Rate Variation..... Whatever plan is ultimately adopted should be based upon two intrinsic principles which must underlie the application of any system of rate variation.

The first is that the solvency of the Fund must not be jeopardized. In this connection, the less advantageous economic conditions affecting employment in the postwar period should be taken into account in determining estimates of the Fund's future solvency. The provisions of several bills introduced in this year's Legislature meet this test by requiring a constant reserve of 10.8 per cent of the previous year's total taxable payroll (equivalent to four times the previous year's contributions to the Fund).

Clerk of Court: Page what?

Mr. Dimond: 53.

Clerk of Court: The red ink portions?

Mr. Dimond: Yes. That is all I have.

Whereupon, the hearing was recessed briefly to permit the disposition of other matters which had been previously set, after which the hearing was continued as follows, with all parties present as heretofore:

The Court: You may proceed.

ROBERT PRATHER

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination

By Mr. Dimond:

Q. Will you state your name?

A. Robert Prather.

Q. What is your occupation? [19]

A. Chief Accountant for the Commission.

Q. The Employment Security Commission?

A. Yes; the Employment Security Commission.

Q. How long have you been engaged as such Chief Accountant?

A. Approximately two and a half years.

Q. What are your duties in that respect?

A. Among other things my duties include the annual computation of experience rating, for the experience rating proposition.

Q. Do you make the computation of credit for experience rating?

(Testimony of Robert Prather.)

A. Not personally, but it is made under my direction in the accounting section. I supervise them and assume full responsibility for them.

Q. I hand you this paper. Will you please tell the Court what that is?

A. This is a projection of the Unemployment Compensation Fund using the cash contributions method only, and that is the method contended by the plaintiffs. We try to show by this projection that the required reserve would fluctuate very wildly, and experience rating credits would also fluctuate wildly.

The Court: What?

A. Experience rating credits and the reserve.

Q. What have you assumed? [20]

A. Annual contributions at two and a half million dollars.

Q. And no change in the employment picture?

A. No change in the total taxable wages under this assumption.

Q. And you have used the alternate 60% for computing surplus? A. Yes.

Q. And you have used only cash contributions?

A. Cash contributions in the determination of surplus and determining of reserve.

Q. If you had used total contributions, as defendants contend should have been used, what would the reserve have been for each year?

A. It would have remained stable at ten million dollars for each of the five years, and contributions would have remained stable, and experience rating

(Testimony of Robert Prather.)

credit would have been one and a half million for each of the years, 60% of the two and a half million dollars.

Mr. Dimond: Do you have any questions?

The Court: I would like to have you restate your last answer, the total reserve.

A. The reserve would have remained stable at ten million dollars for each of the five years.

The Court: And what else?

A. The experience rating credit that would have been issued and distributed among all employers would have been one and a half million dollars as contrasted with the amount shown [21] in the schedule.

The Court: Wait now. You say as contrasted with what amount?

A. The amount shown under columns "Reserve" and "Experience Rating Credit for Next Year." That is abbreviated on the heading.

The Court: "Experience Rating Credit for Next Year." I don't have any "Reserve."

A. In the column to the left.

The Court: It is two columns, not one.

A. Yes, sir; two columns.

The Court: Experience rating credit would have been as you say——

A. One and one half million dollars per year for each of the five years, and the reserve would have remained constant at ten million dollars for each of the five years.

The Court: What are the second, third, fourth and fifth lines?

(Testimony of Robert Prather.)

A. They merely give the continuity of the annual credits and reserves upon which they are based.

The Court: Successive years?

A. Successive years; yes, sir. For example, we start off with an assumed reserve of ten million dollars for the first year, and the second year we find the reserve requirement is only four million dollars, and we could still [22] issue a distributable surplus. That has no meaning. It is fiction, the result of mechanics of the formula and nothing to do with benefit potential based on 2.7 of total taxable wages.

The Court: What isn't clear to me in the lines second, fourth and fifth, is it hypothetical or does it reflect what would be the consequence of this formula contended for by the plaintiffs?

A. Everything in the schedule is hypothetical, but it is brought out to show what would happen under this particular given set of circumstances and to show our reserve requirement as meaning it has to relate to benefit potential. The plaintiffs' contention would destroy that.

Q. Aren't there three things assumed? You assume the amount in the fund is ten million dollars. You assume payrolls are two million five hundred thousand dollars.

A. Total contributions.

Q. Those are two assumptions, the fund ten million dollars, and contributions two million five hundred thousand dollars; and for each of the succeeding years aren't you assuming the payroll level of employment would remain the same?

(Testimony of Robert Prather.)

A. Yes.

Q. And contributions would be the same?

A. Yes.

The Court: What isn't clear to me, do each one of [23] these showings by each line stand by themselves, or is there a connection? In other words, does the second result from working under the first?

Mr. Dimond: I believe it does.

A. It does. The first line, "Experience Rating Credit for Next Year," under that heading, and come down to the next line, the third column from the left, you will find the same amount is carried down. That is the method by which we are trying to show that our reserve will fluctuate, whereas it should not, and that experience rating credit will also fluctuate, whereas there is no basic reasoning for it to fluctuate. In other words, the total contributions are the same.

Mr. Dimond: I believe, your Honor, for the first year if there is a million in experience rating credits used for next year, that will reduce it for the second year.

The Court: This six hundred thousand?

Mr. Dimond: Cash contributions next year would be a million dollars, and experience rating credit a million five hundred thousand dollars; 60% of a million dollars is only six hundred thousand. I mean——

Q. It is four million dollars; isn't that right, Mr. Prather? A. Yes.

(Testimony of Robert Prather.)

Q. It can't be four million; 60% of a million. Is there some mistake there? [24]

A. What line?

Q. That second line. Your reserve is four million dollars. How do you get that?

A. Four times the difference. As I say, starting back with the first line a million five hundred thousand dollars, the amount of credit usable for the succeeding year, if you look on the second year you will find that amount of credit has been used.

Q. The second line?

A. Your third column from the left; and of the total contributions of two and one-half million dollars one million five hundred thousand dollars of that was offset by experience rating credit, leaving a cash contribution of one million dollars, and four times that amount equals the four million dollars reserve, and 60% of that equals the amount in the second from the right-hand column.

Q. And then the reserve is four times your cash contributions each time? A. Yes.

Q. And if four times the total contributions were used, it would be constant at ten million dollars for each of the five years?

A. Yes; that is correct.

The Court: Now, your remark or explanation of line number 2 would also apply to the remaining lines, 3, 4 and 5? [25] A. Yes.

Mr. Dimond: Each is the result of the preceding ones. I should like to offer this in evidence as Defendants' Exhibit C.

(Testimony of Robert Prather.)

Mr. Faulkner: We have the same objection to this. It is a separate set of hypothetical figures, and the question is not what might result from an interpretation. The question is what does the law require. I don't think this throws any light on it at all.

The Court: I understand this is merely explanatory of the method of computation adopted.

Mr. Dimond: Just explanatory, your Honor, to show the results of the plaintiffs' alleged interpretation, to show what would happen, and I think we can show it. It is not wrong to assume certain payrolls and reserve if those figures remain constant for a certain length of time.

The Court: I am fully aware of plaintiffs' contention. While this of course would furnish the explanation and the reason, you might say, for having the law the way that it should be, nevertheless the law is not. Therefore, the Court cannot give any consideration to this.

Mr. Dimond: Well, I am trying to show——

The Court: Or at least allow an explanation of this kind or pointing out consequences of this kind to supersede the terms of the statute. [26]

Mr. Dimond: I thought if there was any ambiguity at all in the statute——

The Court: I don't mean to say it is not admissible evidence. It will be admitted in evidence as Defendants' Exhibit C.

DEFENDANTS' EXHIBIT C

Employment Security Commission of Alaska

Projection of Experience Rating Credit Grants and Fund Reserves Using Cash Contributions Method in Computing Surplus

Year	Contributions: Cash	Contributions: Exp. Rtg. Cr.	Contributions: Total	Reserve	Exp. Rtg. Cr. for Next Year	Method
First	$2,500,000.00	.....	$2,500,000.00	$10,000,000.00	$1,500,000.00	60% of cash contributions
Second	1,000,000.00	$1,500,000.00	2,500,000.00	4,000,000.00	600,000.00	60% of cash contributions
Third	1,900,000.00	600,000.00	2,500,000.00	7,600,000.00	1,140,000.00	60% of cash contributions
Fourth	1,360,000.00	1,140,000.00	2,500,000.00	5,440,000.00	816,000.00	60% of cash contributions
Fifth	1,684,000.00	816,000.00	2,500,000.00	6,736,000.00	1,010,400.00	60% of cash contributions

Observations: For purposes of the attached projection, contributions were assumed to be constant at the rate of Two and a Half Million Dollars per year. The above method of determining surplus results in a fluctuating fund reserve requirement as well as a fluctuating annual grant of credit.

Fund reserve is necessarily related to benefit payment potential, which in turn has a direct relationship with taxable wages on which contributions are due at the rate of 2.7%. The "cash method" does not provide this correlational requirement.

The "total contributions" method of determining surplus which was actually used by the Commission, if applied to the above projection, would result in a constant fund reserve of Ten Million Dollars and an annual grant of credit in the amount of $1,500,000.00 for each of the years projected.

In the attached projection, it is assumed that the Unemployment Compensation Fund was adequate to permit application of the 60% method for determination of surplus.

[Endorsed]: Filed November 13, 1950.

(Testimony of Robert Prather.)

Q. Mr. Prather, do you know whether any credits were issued to the New England Fish Company, one of the petitioners in this case, in 1948?

A. Yes. Credits were issued to the two parties named.

Q. And what amount of credits were issued to each of the two petitioners in 1948?

A. I would have to refer to the files.

The Court: Have you read the answer? Do you know what is set forth in the answer?

Q. Do you know if these are correct?

A. Yes; these amounts are correct. No; I wish to withdraw that statement until I refer to the file that was prepared under my direction, showing the actual computations and amounts of credit issued.

Mr. Dimond: Your Honor, in this case the Commission has drawn up—it is really not a proof of any fact, as much as it is a narrative explanation of the law, how the computations are drawn up, tables, total payrolls, and is in rather complicated form, unless you can read this. I would like to submit it to the Court, not as evidence of facts, but explanatory [27] material. Attached to this explanation I notice——

The Court: Well, it is, you might say, in the nature of the last preceding exhibit?

Mr. Dimond: Well, yes. It shows how credits are actually computed, and they used the plaintiffs, New England Fish Company and Wards Cove Packing Company, as examples, and attached are a history and how they arrived at credit classes.

(Testimony of Robert Prather.)

The Court: Any objection?

Mr. Faulkner: Well, I don't think so, your Honor, except the same objection as to the others, and for the record I make an objection on the same grounds.

The Court: Well, I realize your position is that, while all these things may tend to show the desirability of having this construction, nevertheless the terms of the statute don't warrant it.

Mr. Faulkner: That is right.

The Court: It may be admitted as Defendants' Exhibit D.

Q. Does this show the amounts of credits issued for 1948 and 1949 for the two petitioners that I previously asked you about, Mr. Prather?

A. Yes. These are the forms we use to show the individual computations of each and every employer who is qualified under the act.

Q. My question is, does this show the amounts of credits [28] issued for 1948 and 1949?

A. Yes, they do.

Q. Mr. Prather, were the credits issued these two petitioners for those two years based on the definition as four times the total contributions; that is, four times cash plus credits?

A. Yes. They were based on the consideration that contributions were at the rate of 2.7 of taxable wages reported on or before the cut-off date, in other words total contributions. At no time did we consider cash contributions in the actual individual calculations.

(Testimony of Robert Prather.)

Q. Did you prepare any computation of what the credits would have been for those two companies if only cash contributions had been used, and are the figures contained in the answer in this respect correct?

A. Yes. In this exhibit that has just been presented the amounts have been shown that would have been distributed had only cash contributions been considered. Those amounts are substantially less of course than were actually granted to those employers. In other words, had we followed the employers' contended method, they would have suffered a reduced credit during this particular year.

Q. Which year?

A. The credit year 1949-1950 and also the credit year 1948-1949. [29]

The Court: Am I to understand that would be typical of other years in other words, that the employers would receive less under the method?

Mr. Dimond: Not for each time. I just happened to show these two. They didn't make any complaint under the administrative interpretation but are now alleging it is wrong. I am going to show they have taken advantage of the situation to their benefit.

The Court: For the purpose of precluding——

Mr. Dimond: Yes.

A. I would like to qualify my answer. The amount of credit would have been more or less in the two years I mentioned. I would like to refer to a chart I prepared before answering, just to make sure.

(Testimony of Robert Prather.)

Q. What?

A. I made a statement that the credit to the employers involved would have been less for those two years, 1949-50 and 1948-1949. I would have to check my chart. I know they would have for the year 1949-50.

Q. Will you check for 1948 then?

A. Yes. For the credit year ended June 30, 1949, there would have been a total amount of credit issued of $1,130,174.88 by the employer contended method, whereas actually under the method used it was $1,123,571.18.

The Court: Isn't that reflected in the answer? [30]

Mr. Dimond: That is the over-all picture—it is reflected in the answer—of these two plaintiffs. I don't know whether it is important to know the total distributed for those two years.

The Court: I wondered if it was in the answer itself.

Mr. Dimond: No.

Q. What is the difference?

A. Exactly $6,603.70. That contradicts the statement I previously made that the credit for both those years would have been less by the employer contended method. Actually the credit year 1949-50 would have been less; the other year would have been six thousand dollars more.

Q. In 1948, had his interpretation been followed?

A. Yes.

The Court: In what year?

A. In the credit year ended June 30, 1949.

(Testimony of Robert Prather.)

Cross-Examination

By Mr. Faulkner:

Q. Mr. Prather, have you figured the result for the credit year 1950-1951?

A. Yes, sir; I have. I had to make an assumption before I could do that. I had to assume that contributions remained level. [31]

Q. Well, wouldn't that be based on the contributions for 1949?

A. That would be based—did you say the credit year 1950-51?

Q. 1951.

A. 1951 would be based on the total taxable wages in 1950 and since we haven't experienced those wages, we don't know.

Q. You cut off credits July 1, 1950?

A. Yes; as of July 1, 1950.

Q. If you hadn't cut them off, what would you base them on if you continued them? On 1949?

A. Yes.

Q. You haven't figured what that would be?

A. Yes, sir; I have.

Q. What is the difference?

A. The amount of credit would have been $822,-311.48.

Q. Under which method?

A. Plaintiffs' contended method.

Q. Under yours what would it be?

A. Nothing. The fund—as a matter of fact the

(Testimony of Robert Prather.)

reserve was inadequate to permit the issuance of credit.

Q. Mr. Prather, in preparing these Exhibits C and D you used hypothetical figures there, did you?

A. What was that?

Q. The statement you gave the Court there, Exhibit C?

A. Was that the last one with a narrative report? [32]

Q. No. "C." A. Yes.

Q. You talked about having a surplus of ten million dollars. There is no requirement of law that the surplus be any particular figure?

A. It must be equal to four times the previous year's contributions.

Q. But not in money, like in New York?

A. It is not expressed in terms of money.

Q. There are other things that enter into the condition of that surplus besides credit and contributions, aren't there; other things that affect it?

A. That affect the——

Q. Surplus, and the total amount in the fund?

A. Well, yes. We must consider the qualified employers and——

Q. What I meant was this. Certainly the fund, what you call the Unemployment Trust Fund, that is for the purpose of making payments to those unemployed?

A. That is the sole purpose of it.

Q. That fund then is greatly affected by the

(Testimony of Robert Prather.)

payments you make to the unemployed during the year? A. Yes; that is correct.

Q. That is the principal thing that would affect it?

A. That would affect it, together with any fluctuation and cash contributions. [33]

Q. Now, in 1949 there were increased unemployment payments by almost eighty-two and a half per cent over 1948?

A. Is that the amount reflected in our annual report? If so, it is correct.

Q. I have it here. So that was the big factor that affected the fund in 1949, wasn't it? You don't mean to say payrolls decreased any in 1949?

A. Yes; payrolls did.

Q. Did decrease?

A. Total payrolls increased in 1949, but the cash contributions did decline slightly.

Q. But there was an increase of 82.46%?

A. In the benefits?

Q. In the Unemployment payments?

A. If that is what the report refers to, I will grant that.

Q. I will show it to you so there will be no mistake. The top of the page there.

The Court: When you say payrolls in 1949 increased but cash contributions declined would that be because of credits, an increase in credits?

A. I am sorry, your Honor——

The Court: When you say payrolls in 1949 in-

(Testimony of Robert Prather.)

creased but cash contributions declined, would that be because of an increase in credits?

A. That results from the amount of experience rating credit [34] that has been issued in previous years which affect these two years. Our experience rating credit is during one year but applies for two years. It would result in a reduction in cash, assuming total contributions to be level; any difference here is the result of differences in the amount of credit used by employers as well as in total contributions for two years. I probably am not too clear on that point.

The Court: You have said it in a great many words when it could be in a few words.

A. There are several factors that would change. The proportion of cash to total——

The Court: My question is, if payrolls in 1949 increased but cash contributions declined, would that be due to an increase in credits?

A. Yes, sir; that is substantially correct, except that total payrolls have increased also and in proportion I can't say whether cash contributions; total contributions did increase in 1949; total cash contributions decreased slightly in 1949; and that is the result in the difference of amounts of E.R.C. applied during those two years. In other words, total cash contributions plus total experience rating applied equals 2.7%. If you increase one, you are going to decrease the other as a by-product, assuming the total contributions remain level. [35]

Mr. Faulkner: I think there are no more ques-

(Testimony of Robert Prather.)

tions. I think the Court understands that the credit year commences July 1st.

The Court: I was going to inquire why.

Mr. Faulkner: Perhaps I better ask him. That is the way it is set up in the law.

Q. Will you explain why credit commences July 1st and you deal with payrolls on a calendar year basis?

A. The reason for that is that contributions are on a quarterly basis and after they are completed—so, if, referring to the calendar year 1949, the fourth quarter reports wouldn't come until the first quarter 1950, so to make it possible from a bookkeeping standpoint we must wait until spring the following year when we have all the payrolls at hand, when the computations are made with a reasonable time. We can't do it until six months following the calendar year.

The Court: What is it you can do at the end of the calendar year?

A. We refer to contributions applicable to a particular calendar year; in the surplus formula contributions are applicable to four calendar quarters of the calendar year. This is further complicated——

The Court: You might say there is a lag between the receipt and the application or distribution of credits? [36]

A. Yes, sir; correct. There is three years involved. When the Commission computed its surplus in March, 1947, it considered 1946 payrolls and

(Testimony of Robert Prather.)

allowed rating credit to be off-set the last half of 1947 and the first half of 1948. So, there is three years involved in each annual grant. There is three annual factors involved.

Q. What you mean is that an employer gets his credit on the three years previous experience?

A. That is another consideration. In the determination of a qualified employer——

Q. Well, a new one coming in gets nothing through the first year because it is based on payroll decline? A. Yes.

Q. An entirely new person, he doesn't get it until he has the three years?

A. He must have three full years plus——

Q. In the meantime he must pay 2.7%?

A. That is right.

Q. And that is the experience of the employers in this case; they were qualified but they hadn't paid in; until three years, then they got credit?

A. That is right.

Mr. Faulkner: That is all.

Mr. Dimond: That is all.

(Witness excused.) [37]

Whereupon, H. L. Faulkner, of attorneys for plaintiffs, made the opening argument to the Court in behalf of the plaintiffs; a form of Employer's Experience Rating Credit Notice was introduced in evidence as Plaintiff's Exhibit No. 1 for the purpose of illustration; the Court ordered that this cause No. 6377-A and cause No. 6356-A, both having

the same title as hereinbefore set out, be consolidated for trial and argument; John H. Dimond, Assistant Attorney General of the Territory of Alaska, made the argument to the Court in behalf of the defendants; and H. L. Faulkner, of attorneys for plaintiffs, made the closing argument to the Court in behalf of the plaintiffs; and

Thereupon, the Court took the matter under advisement.

(End of Record.)

Box 2661, Juneau

EMPLOYER'S EXPERIENCE RATING
CREDIT NOTICE

EMPLOYER NAME, ADDRESS, AND ACCOUNT NUMBER

Kensington Mines, Inc.
Box 1121
% Faulkner, Banfield & Boochever
Juneau, Alaska 104-1-3018

Pltf's EXHIBIT NO. 1
RECEIVED IN EVIDENCE
NOV 13 1950
IN CAUSE NO. 6378-A
Clerk
By Deputy

DATE OF ISSUANCE: Sept. 21, 1949

ACCOUNT NUMBER	CREDIT CLASS	CLASS CREDIT FACTOR	1949 SUBJECT WAGES	CREDIT AMOUNT DOLLARS	CENTS
[redacted]	5	.0222	2,560.00	56	83

RETAIN THIS CREDIT DOCUMENT. DO NOT SEND WITH YOUR CONTRIBUTION REPORTS. SEE INFORMATION PAMPHLET
COLUMNS BELOW ARE FOR YOUR CONVENIENCE.

DATE	QUARTERLY PERIOD	AMOUNT APPLIED ON CONTRIBUTIONS DUE	ADJUSTMENTS	AVAILABLE BALANCE OF THIS CREDIT	
9/30/49	3rd	$ 17 39	$	$ 39 44	
12/31/49	4th	17 39		22 05	
2/28/50	1st	none		22 05	
3/30/50	2nd	17 20		rating no longer allowed after 6/30/50	

17.34
39.44
17.39
22.05

THIS CREDIT GOOD ONLY TO LIQUIDATE CONTRIBUTIONS DUE FOR QUARTERLY PERIODS WITHIN THE CREDIT YEAR BEGINNING JULY 1, 1949 AND ENDING JUNE 30, 1950. ANY UNUSED CREDIT BALANCE AS OF JULY 31, 1950 BECOMES AUTOMATICALLY CANCELLED. IF THE BUSINESS IS SOLD THE UNUSED PORTION OF THIS CREDIT IS TRANSFERABLE TO A BUYER OF THE BUSINESS INVOLVED ONLY UPON APPROVAL OF AND AFTER THE TRUE BALANCE IS VERIFIED BY THE EMPLOYMENT SECURITY COMMISSION.

[Endorsed]: Filed November 13, 1950.

46

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove-entitled court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled causes, viz. New England Fish Company, a corporation, and Wards Cove Packing Company, a corporation, for themselves and all others similarly situated, Plaintiffs, vs. George Vaara, Anthony Zorich, Ralph J. Rivers, as the Employment Security Commission of Alaska, and R. E. Sheldon, Director and Chief Executive thereof, Defendants, Nos. 6356-A and 6377-A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 38, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 23rd day of January, 1951.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Title of District Court and Cause.]

United States of America,
Territory of Alaska, First Division—ss.

CERTIFICATE OF CLERK

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the hereto-attached pleadings, which were filed in Cause Nos. 6356-A and 6377-A, which was combined in this court for trial, and is being appealed under the title: New England Fish Co., et al., vs. George Vaara, et al., etc., are the original pleadings and orders filed in said cases and which were designated by the parties hereto as being the pleadings to constitute the record on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the above-entitled court at Juneau, Alaska, this 21st day of March, 1951.

[Seal] /s/ J. W. LEIVERS,
Clerk of District Court.

[Endorsed]: No. 12872. United States Court of Appeals for the Ninth Circuit. George Vaara, Anthony Zorich, Ralph J. Rivers, as the Employment Security Commission of Alaska and R. E. Sheldon, Director and Chief Executive thereof, Appellants, vs. New England Fish Company, a Corporation and Wards Cove Packing Company, a Corporation, for Themselves and All Others Similarly Situated, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed March 2, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12872

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Appellants,

vs.

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Appellees.

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED

Come now appellants above named and adopt the Statement of Points to be Relied on by Appellants, filed with the clerk of the district court, as their statement of points to be relied upon in the United States Court of Appeals, and pray that the whole of the record as filed and certified be printed.

Dated at Juneau, Alaska this 28th day of February, 1951.

J. GERALD WILLIAMS,
Attorney General of Alaska.
/s/ JOHN H. DIMOND,
Assistant Attorney General,
Attorneys for Appellants.

Receipt of Copy acknowledged.
[Endorsed]: Filed March 3, 1951.